THE MARYLAND CONSTITUTION OF 1864

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History is past Politics and Politics are present History.—*Freeman*

THE MARYLAND CONSTITUTION OF 1864

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PREFACE

This study was undertaken at the suggestion of Dr. Bernard C. Steiner, of the Johns Hopkins University, and is an attempt to trace one of the most important movements in Maryland history. Although obscured and complicated by the momentous events which were then rending the life of the nation to its very foundations, its most important phase was the effort to bring about the total abolition of slavery in the state. President Lincoln's Emancipation Proclamation of September 22, 1862, did not apply to Maryland, as this state was not in rebellion, hence the local movement was necessary in order to carry out the policy of the National Government, and the Constitution of 1864, with its prohibitory clause in regard to slavery, was the result.

The subject is divided as follows: Part I. treats of the political movement leading to the call of the Constitutional Convention; Part II. gives an account of the sittings of that Convention and the formation of a new Constitution; Part III. tells of the acceptance of the Constitution by the state.

The Proceedings and Debates of the Convention, the State Documents and Legislative Proceedings of the period, and the contemporary newspapers have been my chief sources, supplemented in part by personal conversation with some of those who took part in the movement.

W. S. M.

Baltimore, May, 1901.

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I.

It is a well-known fact that the two powerful and opposing forces of "freedom" and "slavery" battled with each other for years in the economic and political life of our country, till they ended in the Civil War of 1861-5. In fact, around these forces centred all the history of the United States up to that time, for they were born of our Constitution, were nursed into self-assertive strength under its provisions, and grew as the nation expanded, step by step, year by year, from one administration to another, till finally they overthrew all other ties of political fealty, religious association, and patriotic allegiance, and asserted themselves in the great question of the hour. This question was: Shall the nation be free in its domestic relations as in its government, or shall it countenance and protect negro slavery?

Although veiled under the immediate doctrine of "State's Rights," this fundamental contention soon pushed its way to the fore, and in a terrible struggle of brother against brother, was settled forever on the basis of negro emancipation and the integrity of the Union.

The state of Maryland, situated midway between the North and the South, the two great sections of the country that championed the respective sides of the question, united within her borders both the slave system, dominant in the southern counties, as well as the practically free labor of the northern counties and the mountain districts. To these must be added the city of Baltimore, a seething cauldron of divided political sentiment, and which was often opposed by the remainder of the Commonwealth in matters of state polity. Hence Maryland naturally became the scene of bitter strife, consequent upon and contempora-

neous with the larger struggle that was rending our nation to its very foundations.

Proximity to the city of Washington caused a very close surveillance of the state on the part of the Federal authorities, leading at times to direct interference in state and local affairs by them, as the loyalty of Maryland was in many ways very necessary to the safety of the National Government. One can well realize this by pausing to think of the consequences to the Union of having its capital entirely within the bounds of a hostile territory—a thing practically impossible, unless unbroken military success is presupposed, and even then a matter of great difficulty.

On the part of Maryland, the very fact of being a slave state naturally bound her more closely to the South, although at the beginning of the secession agitation during the latter part of Buchanan's administration probably the larger part of the people were in favor of standing by the Union. On the other hand, a majority were strongly opposed to coercing the South, and after the outbreak of hostilities, this opposition to the war ended in quite a change of sentiment in many cases, so that it is doubtful if the state would have finally remained in the Union, had it not been for the firm restraining hand of the Federal military authorities.[1] After all, it is practically impossible to reach absolute certainty in this matter, and it will always remain a mooted point, and largely a subject for conjecture.

The half-hearted Union men, if we may call them such, as well as those heartily sympathizing with the South, consistently fought all the measures necessary for carrying the war to a successful termination, such as drafting, negro emancipation and enlistments, martial law, and military supervision of elections and other distinctly state functions. On November 6, 1861, the Union party succeeded in

[1] The Southern sympathizers claimed this in 1864. See Debates ii, 825 (references merely to "Debates" and "Proceedings" refer to those of the "State Convention of 1864").

electing Augustus W. Bradford governor by over 31,000 majority, 15,000 more votes than the highest candidate at the presidential election of the preceding year.[3] A large majority of the Legislature also was loyal.

By this election Maryland was definitely lost to the cause of secession, and hereafter the main struggle was over the support of the National Government in the war measures mentioned above. The most important of these, which dealt with the original cause of the differences between the North and the South, was slavery, and around the question of emancipation soon centred the political activity of the next three years. President Lincoln precipitated the struggle in the spring of 1862, when he declared his policy of compensated emancipation, especially for the border states that had remained in the Union, and ultimately leading to national abolition of slavery. He first suggested this to some of the leading politicians, and afterwards officially recommended it to Congress, but desired the action of the above states to be voluntary.[5]

Before going further in tracing this movement, we must take a hasty look at the changed condition of slavery in Maryland at this time. While the interest of the people was directed towards the stirring national affairs of political and military moment, a domestic revolution had taken place, not so much as dreamed of a few years before.[4]

"Scarcely a year had elapsed after the war commenced before the institution of slavery in Maryland became utterly demoralized. The master lost all control over his slave. The relation between master and slave existed only as a feature in the legislation of the past. There was no power to compel obedience or submission on the part of the slave,

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[3] Scharf, "Hist. of Md.," iii, 460, states that many illegal votes were cast by Union soldiers stationed in Maryland and other interested persons.

[5] Nicolay and Hay, "Life of Lincoln," viii, 450-1.

[4] "American," Oct. 10, 1863 (Baltimore papers referred to, unless otherwise stated).

and there was no standard which could be appealed to as fixing the value of the slave as property. Maryland was neither a slave nor a free state."[5]

Among the many reasons for this state of affairs may be mentioned, first of all, the fact that the radical wing of the Republican party, which now largely favored emancipation, had almost complete control of the National Government, and practical control of the Maryland state government as well, through the presence of the armed military and the provost-marshals. Also, by the state of semi-anarchy which always accompanies a war waged near by, the social and industrial orders were almost paralyzed in Maryland, and legal remedies were more slow and uncertain. Again, the Federal forces regularly seized slaves, either for enlistment or for bodily labor in connection with the forts or supply departments, and they refused to return them (or even runaway slaves), to their masters. These facts are more than enough to explain the demoralized condition of slavery.

Although useless for all practical purposes, this institution was by no means dead politically, as following events will show. The people of Maryland were born and bred during its life and strongest influence, so that it was hard for many of them to realize the fact of its practical annihilation. In addition, they desired, if slavery must go, to procure some return for their lost property.

In an aggregate population of 687,000 in 1860, there were 83,942 free negroes and 87,189 slaves. The number of slave-owners was estimated at about 16,000, though many of these owned only one or two slaves.[6] A state with so nearly a numerical equality between free negroes and slaves, offered an excellent opportunity for pushing a policy of emancipation, and this opportunity the emancipation advocates were not slow to seize.

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[5] Inaugural address of Governor Swann, Jan. 11, 1865.
[6] "Debates," i, 616.

President Lincoln, on March 6, 1862, sent in his message urging a policy of compensated emancipation, and it was approved by resolution of Congress on April 10.[7] He had an interview on this subject with the delegations from the border states on March 10, 1862, at which two of the Maryland representatives were present—Cornelius L. L. Leary and John W. Crisfield—but they gave him little encouragement. A second interview, four months later, was no more successful, the border states practically declining to entertain his proposals.

"Little could be expected from the Maryland Union representatives at that time in behalf of the President's policy. They had been elected on June 13, 1861, by the party organization which still reflected the conservatism existing before the war, and whose single bond of party affiliation was opposition to secession and disunion—a condition of political sentiment at that time common to all the border slave states and which was formulated by the Crittenden resolution."[8]

The bill for the abolition of slavery in the District of Columbia which finally, after much delay, passed Congress in the month of April, 1862, served to show the people of Maryland that the cause of emancipation was advancing, and that they must at once prepare to deal with it. The Legislature of 1862, still showing the old suspicious attitude of the slave-owners, who were always on the lookout for anti-slavery measures, had already passed resolutions of loyalty to the Union, but had also protested against any agitation of the subject of emancipation. Hon. Francis Thomas, of Maryland, on January 12, 1863,[9] introduced in Congress a resolution looking toward compensated emancipation in Maryland, and a few days later a

[7] House Journal, 37th Congress, 2d Session, p. 528. Senate Journal, p. 382.

[8] Nicolay and Hay, "Life of Lincoln" (from which we have largely drawn for this period), viii, 452-4.

[9] House Journal, 37th Congress, 3rd Session, p. 186.

bill was actually introduced by Mr. Bingham, of Ohio, for this purpose, which, after being referred to a committee, was reported on February 25[10] and appropriated ten million dollars to carry the plan into effect. Mr. Crisfield objected, and for this and minor reasons the bill finally passed out of sight and was not brought forward again.[11]

But the question was not thus summarily hushed in Maryland. Emancipation now came to the fore, and remained there till the battle was fought to a finish.

"In this emergency the duty of prompt action became imperative, and even the advocates of gradual emancipation upon the President's recommendation found themselves powerless in the midst of the claims of a higher *state necessity*, which demanded the prompt abatement of the evil. . . . While compensation was beyond the ability of the state, the duty was not the less incumbent to abate a nuisance which obstructed all the avenues of agricultural, manufacturing and commercial development."[12]

The more radical wing of the Union party[13] took up the question, and the fall election of 1863 was fought on this line. The *American*, in an editorial in the issue of October 7, 1863, said: "As we predicted at the outset, the question has forced its way, has compelled attention, until at last it is the one thing dwelt upon by the first intellects in the state, by all who are candidates for place and position at the hands of the people."

As slavery was recognized and protected by the existing state Constitution (adopted in 1851) which said: "The Legislature shall not pass any law abolishing the relation of master or slave, as it now exists in this state" (Art. III, Sec. 43), a constitutional amendment was necessary to emancipation.

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[10] House Journal, 37th Congress, 3rd Session, 485.
[11] Nicolay and Hay, viii, pp. 456-7.
[12] Gov. Swann's inaugural address, Jan. 11, 1865.
[13] Not known in Maryland as the Republican party during the war.

But the Constitution had been formed and passed in an irregular and unsatisfactory manner, and was unpopular with a large number of the people, who demanded a more just and more modern instrument. In fact, there had already been several movements for a Constitutional Convention, notably in 1858, when the Legislature ordered a vote on the question of a new Constitution, and made provision for a convention in case the people were favorable, but there was a majority of over 8000 against it.[14] Later, the Legislature of 1862 made a strong move in this direction. During the special session in the fall of 1861 permission was, on December 11, granted the Senate "Committee on Judicial Procedure" to report a bill for taking the sense of the people on calling a Constitutional Convention. The bill was reported during the regular session on January 20, 1862, and passed its third reading on February 14. The House of Delegates amended the Senate bill, and passed it during the night of the last day of the session (March 10), seemingly returning it too late for any further action by the Senate, as we have no subsequent record of the bill.[15]

The radical wing of the Union party in the state had been sharp enough to see the advantage of combining the emancipation sentiment with this dissatisfaction with the State Constitution, and instead of favoring an amendment, declared for a new Constitution in a convention in Baltimore on May 28, 1862, composed of delegates from Union ward-meetings.[16] They carried this move further in the summer of 1863, when they formed a new political party, known as the "Unconditional Union," which embodied the idea among its principles.

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[14] Governor's Message, House Documents, 1864. Schmeckebier, "Know Nothing Party in Maryland," 94-6. (J. H. U. Studies, series xvii, 238-40.)

[15] Senate Journal (1861-2), 20, 127, 250. House Journal, 474, 894-7, Deb. 1, 581.

[16] Nicolay and Hay, viii, 455.

The fall campaign of 1863 was the first general state election since 1861, and hence the first opportunity for radicalism to try its strength since the general Union Party victory when Governor Bradford was elected. A Comptroller of the Treasury, a Commissioner of the Land Office, five members of Congress, a State Legislature and local officials were to be elected. A mass-meeting was held under the auspices of the Union League at the Maryland Institute, Baltimore, on April 20, 1863, which declared for emancipation throughout those parts of the country in rebellion, according to President Lincoln's proclamation of September 22, 1862, and for compensated emancipation in Maryland, according to the President's recommendation of March 6, 1862. Governor Bradford presided at this meeting and also addressed it, as did Hon. Montgomery Blair, ex-Governor Hicks, and other prominent Union men.

The State Central Committee, appointed by the Union State Convention of May 23, 1861, still controlled the party machinery, and was far too conservative to carry out the radical program. At this juncture the Union Leagues of the state stepped in, and in a convention held in Baltimore on June 16, 1863, over which Henry Stockbridge presided, boldly took their stand as "supporting the whole policy of the Government in suppressing the Rebellion." This of course included emancipation. The convention adjourned over till June 23, for which date the State Central Committee had called the regular State Convention of the Union party.

Both conventions met in Baltimore on the same day and in the same building—the "Temperance Temple" on North Gay Street.

The Central Committee Convention, refusing the Union League overtures looking toward a subsequent "fusion" convention, nominated S. S. Maffitt, of Cecil County, for Comptroller, and William L. W. Seabrook, of Frederick County, for Commissioner of the Land Office. The

Union League Convention nominated Henry H. Goldsborough, of Talbot County, for Comptroller, and also nominated Mr. Seabrook for Commissioner of the Land Office.

The division was complete, and these two factions, both loyal to the Union, had now for the present become separate parties, and could only fight out their principles at the polls. The conservatives, hereafter known as "Conditional Union," while protesting their loyalty and desire that the war be carried to a successful close, opposed President Lincoln on account of his "unconstitutional acts"[17] in his aggressive war measures, and also opposed the radical program of emancipation and the agitation of the slavery question, preferring a policy of compromise and delay. On the other hand, they announced themselves as favoring the submission to the people of the question as to the desirability of calling a constitutional convention. The State Central Committee on September 11 issued an address to the people of the state embodying these principles. It was signed by Thomas Swann (chairman), John P. Kennedy, Columbus O'Donnell, John B. Seidenstricker, Thomas C. James, George Merryman, Augustus M. Price, William H. Stewart, and John V. L. Findlay.

The radicals, hereafter known as "Unconditional Union" men, came out for an aggressive policy, and forced their candidates to the front as standing on an uncompromising platform advocating a constitutional convention, the extinction of slavery, and complete and absolute support of the National administration. To carry this out it was absolutely necessary that they should secure a majority of the Legislature, so that they could push through a bill for submitting to the people a call for the convention. Their address was issued on September 16, and was signed by William B. Hill, Henry W. Hoffman, Horace Abbott, James E. Dwinelle, William H. Shipley, S. F. Streeter, John A. Needles, Robert Tyson, Milton Whitney and Wil-

[17] Frederick "Examiner," November 4, 1863.

liam H. Baltzell. The Unconditional Union State Central Committee, authorized by the Union League Convention of June 23, organized on September 29 and issued a second address urging upon the people the principles advocated in that of September 15.[18]

A vigorous campaign was organized by both parties, and active work immediately began.

The Democratic party was almost dead and practically without organization, and although candidates were nominated in the lower counties, and in the First and Fifth Congressional Districts, it abandoned the field in Baltimore and the northern and western counties to the two Union parties.

The campaign was most actively carried on throughout the state, the candidates and party leaders making numerous speeches, and usually urging that the result of the election would show the sentiment of the state on the dominant subjects of emancipation and a new Constitution. The newspapers supporting the Unconditional Union candidates also adopted the same tone, while those supporting the opposite side were, as a rule, very guarded in their statements, often entirely omitting all controversy, as they evidently feared repression by the military authorities. The most potent organ on the radical side was the Baltimore *American*, which printed a series of strong anti-slavery editorials,[19] and on October 12, 1863, stated its position by saying: "The *American* is not the organ of any party—does not desire to be the organ of any party—and never has had any aspirations for party leadership. . . . Our idea is to get rid of Slavery in the state of Maryland at the earliest practicable moment that such a result can be obtained." On November 2 it further urged the people to carry the state for emancipation as the "debt of gratitude which Maryland owes the [National] Government."

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[18] Nelson, "History of Baltimore," 155.
[19] See issues of October 7, 10, 12, 20, 21, 29.

On the evening of October 28 the Unconditional Unionists closed the campaign with a large and enthusiastic mass-meeting in Monument Square, the largest held in Baltimore for years. John Lee Chapman, Mayor of Baltimore, presided, and addresses were made by Henry Winter Davis, Salmon P. Chase, General James A. Garfield, Brigadier-General E. B. Tyler, and others of local or national reputation. Strong resolutions were passed favoring the prosecution of the war, "supporting the whole policy of the [National] administration," and also saying "we are in favor of emancipation in Maryland by a Constitutional Convention," and that "the convention ought to meet and conclude its labors that the Constitution may be ratified at least by the next Presidential election." An additional clause declared that "traitors who do not acknowledge the government whose authority protects the ballot-box have no right to meddle with the elections." This was perhaps intended as a judicious hint of what followed during the next few days.

In spite of the great weight and importance of the questions involved, it has been stated by those in a position to know, that there was much less strife and animosity of party feeling than might have been expected, which can be explained by the fact that the larger part of the contestants were united in their loyalty to the Union. In addition, affairs were further complicated and party lines practically broken by a dissatisfied independent movement in Baltimore City, which nominated several candidates of its own for local offices and the Legislature. This did not obscure the dominant questions, however, which were to be decided on the election of a Comptroller.

Suddenly a different phase was put on the entire situation by the interference of an exterior force—the military—acting to some extent at least on the authority of the National Government.

On October 26, Thomas Swann, chairman of the (Conditional) Union State Central Committee, had sent the following letter to President Lincoln:

OFFICE OF THE UNION STATE CENTRAL COMMITTEE,
BALTIMORE, October 26, 1863.

TO THE PRESIDENT.

Sir:—A suspicion having taken possession of the minds of many loyal Union voters of the state of Maryland, that the election about to take place on the 4th of November, will be attended with undue interference on the part of persons claiming to represent the wishes of the Government, I am induced, by what I know to be the desire of a large number of our people, and in furtherance of applications daily made to me, to ask most respectfully, that you would place me, as Chairman of the Union State Central Committee, in possession of your views upon this subject, in order that they may be communicated to loyal voters throughout this state.

I will beg you to believe, Mr. President, that it is with no doubt or distrust on my part, as to what will be your response to this letter, that I ask this favor at your hands; but simply to satisfy a large class of persons who believe that an expression of opinion on your part, would not be without its benefit to the people of the state, in promoting what we all desire, a fair expression of the public voice.

I am, with great respect, your obedient servant,

THOMAS SWANN,
Chairman of the Union State Central Committee.

The President replied on the next day as follows:

EXECUTIVE MANSION, WASHINGTON, D. C.,
October 27, 1863.

HON. THOMAS SWANN.

Dear Sir:—Your letter, a copy of which is on the other half of this sheet, is received. I trust there is no just ground for the suspicion you mention, and I am somewhat mortified that there could be a doubt of my views upon this point of your inquiry. I wish all loyal, qualified voters in Maryland and elsewhere, to have the undisturbed privilege of voting at elections; and neither my authority nor my name can be properly used to the contrary.

Your obedient servant,
A. LINCOLN.

Major-General Robert C. Schenck had been placed in command of the Middle Department, Eighth Army Corps, on December 17, 1862, with headquarters in Baltimore, and had been most active in his support of the National Government, as well as in using severe and stringent means to suppress all traces of disloyalty. This, of course,

had aroused bitter opposition in the Southern sympathizers and also the more conservative Union people of the state, who were stated above as opposing the policy of the administration. On the other hand, the outspoken Unionists had, in many cases, enthusiastically supported General Schenck. A good instance of this is found in the fact that, when in July, 1863, he levied damages on known Southern sympathizers in Harford county to reimburse their Union neighbors for wanton destruction of their property by unknown persons,[20] the Second Branch of the City Council on August 10 passed unanimous resolutions thanking him for this severe measure, and endorsing his administration.[21]

Now, on October 27, 1863, General Schenck issued his famous "General Order No. 53," in which he practically took military control of the ballot-box in the coming election. After stating that "It is known that there are many evil-disposed persons now at large in the state of Maryland who have been engaged in rebellion against the lawful Government, or have given aid and comfort or encouragement to others so engaged, or who do not recognize their allegiance to the United States, and who may avail themselves of the indulgence of the authority which tolerates their presence to embarrass the approaching election, or through it to foist enemies of the United States into power," it was ordered, first, that provost-marshals and other military officers "arrest all such persons found at, or hanging about, or approaching any poll or place of election on November 4, 1863;" second, that these officers should require of voters who were challenged on the ground of disloyalty the following oath: "I do solemnly swear that I will support, protect and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign; that I hereby pledge my allegiance, faith and loyalty to the same, any ordinance, resolution, or law of any State Convention or State Legislature to the contrary

[20] "Sun," July 30, August 8.

[21] "Sun," August 11.

notwithstanding; that I will at all times yield a hearty and willing obedience to the said Constitution and Government, and will not, either directly or indirectly, do any act in hostility to the same, either by taking up arms against them, or aiding, abetting, or countenancing those in arms against them; that, without permission from the lawful authority, I will have no communication, direct or indirect, with the states in insurrection against the United States, or with either of them, or with any person or persons within said insurrectionary states; and that I will in all things deport myself as a good and loyal citizen of the United States. This I do in good faith, with full determination, pledge, and purpose to keep this, my sworn obligation, and without any mental reservation or evasion whatsoever." Thirdly, it was ordered that judges of election refusing to carry out this order were to be reported to headquarters.

As General Schenck and his officers had openly advocated the election of the Unconditional Union ticket, this order was, aside from all expediency, most unfair to the loyal citizens in the Conditional Union and Democratic parties. It was naturally greeted with a storm of protests by them, and execrated from one end of the state to the other. The radical Union men, aside from political influences, generally endorsed it, urging that the importance of the full support of the Union by Maryland was far more important than any matters of local liberty and freedom.

Governor Bradford, a man of undoubted loyalty, who had courageously upheld the Union cause without compromise, and was in personal and friendly communication with the military authorities, had received no intimation in regard to the order.[22] This was rather bad treatment, for the chief magistrate of the state certainly deserved at least the courtesy of a proper notice that the state laws were to be superseded by military direction, especially since

[22] Governor's Message, Senate and House Documents, 1864.

he had openly espoused the cause of a new Constitution and emancipation early in the fall campaign. Entirely in the dark as to the course of events,[23] Governor Bradford unknowingly followed the example of Thomas Swann, and on October 31 wrote President Lincoln, stating that rumors were current to the effect that the military forces were to be present at the polls, and protesting against the same, also saying: "As there is no reason, in my opinion, to apprehend any riotous or violent proceedings at this election, the inference is unavoidable that these detachments, if sent, are expected to exert some control or influence in that election." The letter protested against any "restrictions or qualifications on the right of suffrage," and added that, judging from the President's previous course, he thought any orders issued must be without his knowledge.

On November 2 Mr. Lincoln wrote in answer to this letter, that he had conferred with General Schenck, who had assured him that it was almost certain that violence would be used at some of the voting places on election day unless prevented by his provost guards. Further, he justified his position with reference to his policy in the past on the ground that the laws of Maryland required no test of loyalty, and added that General Schenck's order "assumes the right of voting to all loyal men, and whether a man is loyal, allows that man to fix by his own oath. . . . I revoke the first of the three propositions in General Schenck's General Order No. 53,[24] not that it is wrong in principle, but because the military being, of necessity, exclusive judges as to who shall be arrested, the provision is liable to abuse. For the revoked part I substitute the following: That all provost marshals and other military officers do prevent all disturbance and violence at or about the polls, whether offered by such persons as above described, or by any other person or persons whatsoever.

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[23] It appears that General Schenck's order was not at once generally published.

[24] See page 20.

The other two propositions of the order I allow to stand. General Schenck is fully determined, and has my strict orders besides, that all loyal men may vote, and vote for whom they please."

Thus rebuffed, and recognizing the futility of any further attempt to persuade the national and military authorities to recede from their position, Governor Bradford immediately issued (November 2) a lengthy proclamation "To the Citizens of the State, and More Especially the Judges of Election," a large part of which had been prepared beforehand. In this document he protested strongly against the military order and its provisions as most obnoxious and entirely without justification, "more especially offensive and dangerous in view of the known fact that two at least of the five provost-marshals of the state are themselves candidates for important offices, and sundry of their deputies for others." The attention of the Judges of Election was called to the fact that "they are on the day of election clothed with all the authority of conservators of the peace, and may summon to their aid any of the executive officers of the county, and the whole power of the county itself, to preserve order at the polls, and secure the constitutional rights of voters." They were also reminded of their oath to observe the laws of the state, that the elections be so conducted as to permit the qualified voters to fully cast their ballots, and that there was absolute legal prohibition of military at or near the polls. The original proclamation closed with the two following paragraphs:

"Whatsoever power the state possesses, shall be exerted to protect them[25] for anything done in the proper execution of its laws.

"Since writing the above I have seen a copy of the President's letter to the chairman of the Union State Central Committee, bearing the same date with the order, and evidently showing that the order was unknown to him,

[25] *i. e.* Judges of election.

that it would not have been approved by him if he had known it [beforehand?] and that it is, therefore, all the more reprehensible."

A postscript was added containing the modification by the President of General Order No. 53, as has been already stated.

Military orders were immediately sent to the Eastern Shore, against which it was claimed the General Order had been especially directed (as martial law had never been declared in this part of the state) ordering that the circulation of the Proclamation be suppressed. An embargo was laid on all steamers trading with that part of the state, and the newspapers were forbidden to publish it.[36] However, Governor Bradford issued it in pamphlet form on the same day,[37] and it was finally permitted to appear in the Baltimore papers on the morning of the election (November 4). This action on the part of the military authorities is explained by General Schenck in a reply published by him on November 3, in which he stated that he desired that there should go out with the Governor's proclamation the letter from President Lincoln to Governor Bradford on the subject of the action of the military. He added that the simple purpose of the order was "to prevent traitorous persons from controlling in any degree by their votes, or taking part in the coming election." Further, in order to secure peace and good order at the polls, the officers entrusted with this duty were in every case furnished with written or printed instructions containing the following: "The officers and men are cautioned not to commit or permit any unlawful violence. They must not enter into political discussions, and are to remember that while protecting the polls from rebel sympathizers, they are conservators of the peace, and are there to support the judges of election."

This public controversy ended here, but the results of

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[36] Governor's Message, Senate and House Documents, 1864.
[37] "Sun," November 4.

conflicting authority and such an uncertain and complicated state of affairs were as might easily have been foreseen.

The election took place, as stated above, on Wednesday, November 4, 1863, and resulted in an overwhelming victory for the Union ticket.

Goldsborough, for Comptroller, received 36,360 votes, and Maffitt, 15,984, an Unconditional Union majority of nearly 20,000. In Baltimore City, the vote was 10,545 for Goldsborough, and 367 for Maffitt. A majority of the state Legislature also was in favor of the Constitutionl Convention and emancipation. John A. J. Creswell, Edwin H. Webster, Henry Winter Davis, and Francis Thomas, the Unconditional Union candidates in the first four districts respectively, were elected to Congress, Webster and Davis with practically no opposition, but the Fifth District went Democratic, Benjamin G. Harris being successful against his Conditional and Unconditional Union opponents. Goldsborough's majority was about ten thousand less than that of Governor Bradford in 1861, but the Democratic votes cannot be compared, as that party had no candidates for state officers in 1863. The entire Union vote (of both parties) was practically the same in 1863 as in 1861, although the total vote was only about half that of the Presidential election of 1860. Part of this decrease was of course caused by lack of Democratic nominations and also the numbers of secession sympathizers who had gone South to enter the Confederate service; but fear of the military at the polls, or the intimidation practiced by it (of which there is absolute proof) were the greatest causes, the number not voting at this election for these latter reasons being estimated at about one-third of the total vote in many districts of the state.[25] Allowing absolute fairness at the polls, and even this entire amount throughout the state as going solidly for Maffitt, Goldsborough would still likely have won by a good round majority, so that the mili-

[25] See evidence in contested election cases, House Documents, 1864; also contemporary newspapers.

tary force used did not materially affect the final result as much as might have been expected, except in the First Congressional District (Eastern Shore), where it is perhaps doubtful if Mr. Creswell could have defeated Mr. J. W. Crisfield, his opponent. The complexion of the Legislature under these different conditions is a mere matter of guess work, for although it is nearly certain that the House of Delegates would have still been favorable to the call of a convention, yet the Senate remains an entirely uncertain quantity. It is hardly necessary to state that the above speculations refer only to the action in this election of the nominally loyal voters, large numbers of whom were opposed to the Unconditional Union platform. As said at the beginning, it is impossible accurately to estimate the sentiment at this time of the total population of the state.

In Baltimore City, the day of the election was very quiet. The saloons were all closed, and the military at the polls, under the immediate supervision of General E. B. Tyler, is said to have neither intimidated nor attempted to obstruct those who offered to vote.[29] The *American* of November 5 says: "Tickets of all kinds were in abundance at the polls, and all loyal men voted their sentiments freely, so far as the choice of candidates was concerned. . . . Mr. Maffitt, the representative of the slave-holding interest, was scarcely regarded as a candidate in the contest." The city police, as well as the soldiers on duty at the polls, were under strict orders to refrain from electioneering, and to preserve the peace in every way.

As stated above,[30] the main force of General Schenck's order seemed to be directed against the Eastern Shore. A force of infantry or cavalry was sent to each of the eight counties on that side of the bay, and detachments under command of subaltern officers were stationed at the various polls.[31] The following proclamation[32] was issued by Lieu-

[29] See daily papers. [30] Page 28.

[31] Report Senate Committee on Elections, Doc. "D", 1864.

[32] "Documents Accompanying Governor's Message," House and Senate Doc., 1864.

tenant-Colonel Tevis, commanding the 3rd Maryland Cavalry, and circulated in Kent and Queen Anne's counties:

HEADQUARTERS 3RD MARYLAND CAVALRY,
CHESTERTOWN, November 2, 1863.

Whereas, the President of the United States, in reply to a letter addressed to him by Hon. Thomas Swann, of Baltimore City, has stated that all loyal qualified voters should have a right to vote, it therefore becomes every truly loyal citizen to avail himself of the present opportunity offered to place himself honorably upon the record or poll books at the approaching election, by giving a full and ardent support to the whole Government ticket, upon the platform adopted by the Union League Convention. None other is recognized by the Federal authorities as loyal or worthy of the support of any one who desires the peace and restoration of this Union.

[Signed] CHARLES CARROLL TEVIS,
Lt.-Colonel Commanding.

Colonel Tevis was afterwards put under arrest by order of General Schenck, on the charge of acting in excess of orders, but was soon released, presumably without trial.[33]

This so-called "Government Ticket" was in several, if not all, of the counties in the First Congressional District, printed on yellow paper, and in some instances known Southern sympathizers were allowed to vote if they voted this ticket, while known Unionists were excluded for refusing to do so.[34] There seems to have been no regularity of procedure by the military, in some districts only those tickets being thrown out which contained the name of Mr. Crisfield for Congress, while in other places the procedure was changed to support certain candidates for local offices. For instance, in several districts of Somerset County, the provost-marshal in charge, who was a candidate on the radical ticket for sheriff of the county, announced that no one who would vote for him should be molested. The Democrats shrewdly promised to put the man on their ticket,

[33] "American," November 6 and 10.
[34] Senate and House Documents, 1864.

and were allowed to vote without any difficulty, but when the votes were counted it was found that this practical politician was sadly tricked, as nearly all the Democratic ballots showed no trace of his name. At Princess Anne, Somerset County, the judges of election were arrested, and the polls closed when only one citizen had voted. General Lockwood soon after released the prisoners, but the citizens of the whole district were deprived of voting. Several Union candidates in Kent County were arrested by order of Captain John Frazier, Jr., himself a candidate for a county office. They were carried to Baltimore, but were immediately released by Colonel Donn Piatt, General Schenck's chief-of-staff, who not only showed surprise, but disavowed responsibility for the action. Captain Frazier, as in the case of Colonel Tevis, was later arrested for this by General Schenck, but we could find no record of the final outcome of the matter, as in all probability it also was soon passed over.

Numerous other instances might be mentioned, as they were well brought out in contested election cases,[35] but perhaps enough has been given to show the general character of the outrages. There were several isolated cases in other parts of the state, as in Frederick and Prince George's[36] counties, but nothing on so large a scale and with such bold effrontery as in the First Congressional District.

As a result of the conflict of authority between Governor Bradford and General Schenck, there was no regularity in the requirement of the prescribed oath. In some parts of the state every voter was required to take it, and in others it was observed very little, if at all. In a number of places on the Eastern Shore those voting the "yellow" ticket were not even challenged, while the remainder were subjected to the oath. It should be noted that there

[35] See Senate and House Documents, 1864.
[36] Debates, iii, 1735-6.

is no record of any violence or breach of the peace on the part of the citizens of the state. This was no doubt partly the result of intimidation, but also showed the admirable power of self-restraint and the law-abiding character of the people. Although, as stated above, the general result throughout the state was not materially affected by this use of armed force, yet the great question is as to who was originally responsible for the move, and to what extent it was justified. After a careful weighing of the evidence, our opinion is that President Lincoln and General Schenck used the military merely to keep disloyal citizens from voting, a proceeding which may partly be justified as a legitimate political move to strengthen the hands of the government in time of war. The policy of the administration in regard to the other border states tends to confirm this view.[87]

The Baltimore *American* repeated the strong argument that had been urged by President Lincoln in support of this measure, by saying in an editorial on November 23, 1863: "The very fact that the laws of the state provided no remedy for its protection against the arts of treason as lately displayed at the polls, constituted an imperative and all-sufficient reason why the general government should provide some remedy for so unexpected and grave a disability."

The great mistake, and the one for which General Schenck deserves severe censure, if not positive condemnation, is found in the fact that he not only openly espoused the cause of the Unconditional Union party, but actually made political speeches at various meetings in different parts of the state, and urged the people to vote for Goldsborough and the other candidates on that ticket. He also allowed his officers to do the same.[88] It would be hard to

[87] Nicolay and Hay, "Life of Lincoln," viii, 420, 427-8, 432-3, 441, etc.

[88] See "Sun," Aug. 17, Oct. 29; "American," Oct. 9, 15, 16, 19, 23, 29.

justify this on the ground of zeal for a good cause. No wonder Colonel Tevis spoke of the Unconditional Union as the "Government" ticket in his very original proclamation at Chestertown.

On the other hand, it must be said in General Schenck's defense, that he was hardly in any direct manner responsible for the outrages on the Eastern Shore, although he himself by his own actions practically laid the way open for the frauds of the unscrupulous local politicians and their supporters among the military. These in all probability formed a part of that band of "loyal citizens" who urged upon him the necessity of the military possession of the polls, as he stated in his proclamation of November 3, already mentioned.[39]

It is interesting to note that precisely the same order as "Number 53" was issued by General Schenck to govern the election held in Delaware[40] on November 19, 1863. Far from protesting against this action, the Governor of the state officially endorsed it as follows:[41]

STATE OF DELAWARE, EXECUTIVE DEPARTMENT,
DOVER, November 13, 1863.

All civil officers and good citizens of this State are enjoined to obey the above military order, issued by the Commanding General of the Middle Department, and to give all needful aid for the proper enforcement of the same.

WILLIAM CANNON.
Governor of Delaware.

An attempt was made to induce Governor Bradford to refuse to give certificates of election in view of the undoubted irregularities at the polls, but after seeking the advice of Hon. Reverdy Johnson the Governor declined to accede to this, alleging lack of power, and that his duties were merely ministerial in cases of this kind.

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[39] Issued by Gen. Schenck in answer to the Governor's proclamation (see page 23). Further particulars on this subject in Governor's message, 1864.

[40] Also in the jurisdiction of the Middle Department.

[41] "American," Nov. 17, 1863.

The Legislature met at Annapolis on January 6, 1864, and soon after organized. John S. Sellman, of Anne Arundel was elected President of the Senate, and Thomas H. Kemp, of Caroline, Speaker of the House of Delegates. Governor Bradford's message was a long and able document. It contained, in addition to the usual discussion of the financial and other economic affairs of the state, an account of the controversy and difficulties at the previous election, with some condemnation of the military authorities. Some suitable action on the part of the Legislature was suggested, so as to remedy military interference and prevent the use of marked ballots. The Governor also urged that a Convention Bill be speedily passed, and that a state system of education and numerous other important subjects should be carefully considered.

In the House of Delegates, Mr. Stockbridge, of Baltimore City, on January 8 offered an order that so much of the Governor's message as related to a Constitutional Convention be referred to a select committee of five members, to be appointed by the Speaker, with authority to report by bill or otherwise. This was adopted, and on the 12th the following committee was appointed: Messrs. Stockbridge (chairman) and Jones, of Cecil; Trail, of Frederick; Tyson, of Howard, and Frazier of Dorchester.

This committee reported a bill on January 15, which provided for a vote of the citizens of the state on the question of calling a Convention, and for the election of delegates on the same day. Mr. Tyson presented a minority report, around which the opposition at once assembled all its strength, as it was a measure of delay, providing for a special vote to decide for or against a Convention, with the addition that in case of a favorable result the Governor was to inform the Legislature of the fact at a special session or at the next regular one. This body then *might* provide for the election of delegates and the assembling of such a Convention. The contest lasted for some days and was quite bitter. The minority report, offered in the form of

amendments to that of the majority, was defeated on January 20 by a vote of 20 in favor to 50 opposed. After long and excited debate and continued negotiation with the Senate, the House finally, on February 3, passed the bill on its third reading by a vote of 43 to 17.

The Senate early appointed a committee to confer with a like one from the House on the subject of the recommendation for a Convention contained in the Governor's message. A joint bill was reported on January 18, and considered by the Senate at various times, till finally the bill passed by the House was received. Numerous propositions went back and forth between the two Houses till finally, at the suggestion of the House of Delegates, a conference committee was appointed on the morning of February 8. The differences were at once adjusted, and the committee report sent in that evening was immediately adopted by the Senate by the vote of 14 to 2. The House received the report on the next day, and adopted it, yeas 43, nays 15, accepting the minor Senate provisions as to delegates, etc.

The Convention Bill, as finally passed, contained the following provisions: A vote was to be taken on the first Wednesday of April (6th) at the usual places and in the legal manner on the question of holding a Convention. At the same time, delegates to this Convention were to be elected, the qualifications being the same as those necessary for a seat in the House of Delegates, and the number the same as the total representation in both Houses of the Legislature. In making returns of votes, the judges of election were to certify, under oath, whether there was military interference (except on demand of the civil authorities), in case of which the Governor was to order one or more new elections in the districts affected till that interference was discontinued. An oath of allegiance was required of all voters challenged on the ground of disloyalty. If the vote at the election was favorable to a Convention, the Governor was to issue a proclamation, calling it to meet in Annapolis

on the last Wednesday of April (27th), 1864. Sixty-five delegates of the total of ninety-six were to be elected before the Convention assembled, and fifty members were necessary for a quorum. No delegate was to take his seat till he had taken before the Governor a certain stringent oath of loyalty. The compensation was five dollars a day and the mileage allowed members of the Legislature. A reporter of debates and proceedings was to be provided by the Convention. The Constitution and form of government adopted was to be submitted to the legal and qualified voters of the state "at such time, in such manner, and subject to such rules and regulations as said Convention may prescribe." In case of the adoption of the new Constitution, the Governor was to issue a proclamation to that effect, and take the necessary steps to put it into operation. At the elections provided, the tickets were to be printed on white paper, other ballots not to be received, and heavy penalties were imposed on those judges of election or other civil officers who failed to do their prescribed duty.

The campaign, in consequence of the above, began early. As the state had declared for emancipation by the previous fall election, the question now before the people was in regard to the form that this action was to take. The Unconditional Union party of the state boldly took its stand in favor of immediate emancipation without either compensation of slave-owners or "negro apprenticeship," and the election, in a great measure, favorably settled this as far as the people were concerned.

The Conservative Union State Central Committee, at a meeting held in Baltimore on December 16, 1863, led by Thomas Swann and John P. Kennedy, had declared for immediate emancipation in the manner easiest for master and slave, since the people had willed it at the last election. This evidently in large measure accounts for the fact that in Baltimore City and several counties there were merely "Union" candidates, with no opposition. In others of the counties, however, there were three tickets—"Uncon-

ditional" and "Conservative" Union and Democratic. As in the previous election, the Democrats were not organized throughout the state, their nominations for Convention delegates being mainly in the lower counties. They had no candidates in Baltimore City, and those in Baltimore County were withdrawn before the election, leaving the Union nominees alone in the field. Wherever there were Democratic party organizations, they generally declared themselves opposed to emancipation on any terms.[a] In fact, the declared tactics of those opposed to the Unconditional Union program were to delay the call of a Convention till "all the people of the state could vote," claiming that they would then defeat the movement. Failing that, they fought for compensation for slaves and some system of negro apprenticeship.

General Schenck had resigned his command soon after the election in the fall of 1863, in order to accept the seat in Congress to which he had been elected as a representative from Ohio. Brigadier-General Lockwood temporarily filled the position of commanding general till Major-General Lew Wallace was appointed to the command of the Middle Department on March 17, 1864.

General Wallace was, on the whole, more aggressive than General Schenck in the administration of his department, boldly taking his stand at the outset on the public declaration that a "rebel and a traitor had no political rights" whatever. However, on March 30, 1864, he wrote a letter to Governor Bradford, saying that he was anxious to frustrate the attempts of disloyal persons (some of them candidates) to vote on April 6, and asking if there were state laws and legislative action sufficient to prevent it. The Governor answered the next day, saying that the laws were entirely sufficient, if faithfully executed, as he had every reason to hope they would be, to exclude disloyal voters from the polls. Therefore General Wallace issued

[a] Also see p. 63.

no general military orders like those of General Schenck, though he compelled Mr. E. G. Kilbourn, a candidate in Anne Arundel County, to withdraw on account of his questionable position in 1861 at the outbreak of the war. But like his predecessor, General Wallace also made the mistake of publicly showing his sympathy in the election, saying at an Unconditional Union mass-meeting at the Maryland Institute in Baltimore on April 1, 1864, that "so far as in him lay, the liberty-loving people of the good old state should have his assistance."

The Unconditional Union policy was a second time overwhelmingly victorious on April 6, 1864. The vote on the Convention was 31,593 "for," to 19,524 "against," a favorable majority of 12,069, but yet about 8000 less than Goldsborough's majority in November, 1863, although the total vote was about the same. The northern and western counties gave large majorities for the Convention, while the southern districts went heavily against it. In Baltimore City the vote was 9102 favorable, with only 87 opposed.[42] This shows that some sort of intimidation must have been practiced,[43] although the *American* stated[44] that "the election proceeded very quietly in the city, perfect order being observed without even the shadow of military interference."

It appears that soldiers were well distributed throughout the state, either near the polls or within striking distance, but the cases of direct interference were not nearly so numerous, and were much more scattered than in the previous election,[45] while there are even some records of fraud and

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[42] It was claimed that the total vote was only one-third the usual number hitherto cast. Debates i, 639.

[43] See Steiner's "Citizenship and Suffrage in Maryland," p. 42.

[44] Issue of April 7. It also urged that the small vote in the city was due to lack of organization, no opposition, and to no canvassing of candidates who were seeking office. See also "Sun," Nov. 7.

[45] "Sun," April 7; Annapolis "Republican" (quoted in "American," April 11); Frederick "Examiner," April 13; Debates i,

outrage on the part of Southern sympathizers."[47] On the whole, intimidation rather than violence was the cause of many citizens failing to vote. The judges of election reported only one case of military interference, that in the Rockville District of Montgomery County. A second election was held in this district according to the provisions of the Convention Bill, but as the total county vote had shown a sufficient Democratic majority to elect the three candidates on that ticket without any doubt, the final result was not much affected thereby.

Out of the total of 96 delegates elected, there were 61 Union men, nearly all pledged to unconditional emancipation, and 35 Democrats, coming mainly from the southern part of the state.

Governor Bradford, immediately upon the receipt of the official returns, issued a proclamation for the assembling of the Convention on Wednesday, April 27, 1864.

The first act of the emancipation drama was now complete. As we have attempted to show, the movement was aided more by the general policy of armed restraint exercised upon the Southern sympathizers of the state by the National Government since the beginning of the war, than by any of the above-mentioned instances of military interference. The radical Union program had been a success.

582, 639-40; ii, 915-6; iii, 1726, 1763. Scharf, "History of Maryland," iii, 579-80, gives an account of a most unfair system of challenging and questioning, aimed against those under suspicion of being Southern sympathizers. Also see Nelson, "History of Baltimore," 551-2.

[47] Frederick "Examiner," April 13; "Sun," April 7; "American," April 7, 8.

II.

The Convention met at the State House in Annapolis on Wednesday, April 27, 1864. Of the ninety-six members elected, eighty were present on the first day. The remaining sixteen, of whom fifteen were from the southern counties, appeared within the next week or two, with the exception of John F. Dent, of St. Mary's, who did not take his seat in the Convention till July 7, having been detained by illness in his family and other domestic causes.

It would have been difficult to have found at that time a more representative body of Maryland men, nearly all of them native-born to the state, with two striking exceptions —Henry Stockbridge, of Baltimore City, a native of Massachusetts, and Oliver Miller, of Anne Arundel, a native of Connecticut—who were prominent in the councils of the majority and minority respectively. The members from the southern part of the state in particular, were largely from the oldest and best known families of Maryland, and showed their conservatism in the fact that they formed the minority which not only opposed emancipation, but also nearly all other measures of reform introduced in the Convention.

Five of the members had been in the Convention of 1850-1 which had formed the old Constitution—Messrs. Chambers, Dennis, Dent, Lee and Ridgely—and J. S. Berry, of Baltimore County, had been Speaker of the House of Delegates of the "Know Nothing" Legislature of 1858, and at this time held the office of Adjutant-General of the state. Messrs. Goldsborough, Smith of Carroll, Briscoe and Dennis had been members of the celebrated "Frederick Legislature"[1] of 1861, the two former as pronounced

[1] Suppressed by the military authorities.

Unionists, and the others on the opposite side. Mr. Goldsborough was now State Comptroller, having been elected at the previous fall election as we have seen. Fourteen had been members of the Legislature of a few months before, of whom Messrs. Stirling and Stockbridge, both of Baltimore City, had been most active in preparing and advocating the Convention Bill in the Senate and House respectively, while Messrs. Clark, of Prince George's, and Dent, of St. Mary's, had been leaders of the opposition to it in the House of Delegates.

In fact, it is seldom that one reads the records of events of the ten or fifteen preceding years without coming upon the names of many of those who were members of the Convention of 1864.

Taken as delegations, those from Baltimore City, Allegany and Prince George's counties were perhaps the stronger, though several others were of nearly the same excellence. Many members who had been side by side in the "Whig" and "Know Nothing" parties, or even the "Union Party" days of 1860, were now ranged on opposite sides, in this only showing the power of that mighty force which had sundered the former political ties of so many of the people of the state.[2] It should be said in addition, that nearly all the leaders were of the legal profession.

From the outset, the majority took a stand as supporting the Union and the National Government, especially in its policy as set forth in Mr. Lincoln's administration, and their measures were planned with the intention of keeping Maryland well in line with these ideas. These sixty-one Union members were from the northern and western counties, Baltimore City, and Talbot, Caroline and Worcester counties of the Eastern Shore, these latter three the southern slave counties in which the cause of the Convention had

[2] For instance, Messrs. Chambers and Stirling were formerly Whigs, Messrs. Smith (of Carroll) and Dennis had been candidates on the Bell and Everett electoral ticket in 1860. Mr. Goldsborough was formerly a Democrat.

been successful, particularly in Worcester, where the majority had been overwhelming.[3] These men, while firm and aggressive in their policy and expressing a sense of great responsibility,[4] can seldom be accused of unfairness, as they resorted to high-handed methods in very few instances. Although relying on their large numerical superiority, they sometimes kindly informed the minority at the beginning of a debate that the final outcome was already settled, a statement more forcible than pleasant,[5] yet, on the whole, more fault could be found with the provisions they carried through than with the manner of doing so.

Very few regular caucuses were held by the majority members,[6] for they had been largely elected on and pledged to the same platform, so that they were a unit in many particulars, though differing widely on certain subjects, as the judiciary, internal improvements, etc., which will be noted later. Owing to their decided numerical superiority, it was almost entirely unnecessary to use the "party whip" or any other political methods in order to secure a majority vote. Archibald Stirling, Jr., of Baltimore City, may be regarded as their leader. He frequently closed the debate with brilliant and forceful arguments—among the best of those given in the Convention—rather "cutting" at times, but always clear and logical.[7] He was ably seconded by Henry Stockbridge, of Baltimore City, another of the strongest men in the Convention; John E. Smith, of Carroll; Wm. T. Purnell, of Worcester, and others scarcely less able. As stated above, the Baltimore City delegation was extremely influential as a whole, usually standing

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[3] 890 "for," 135 "against." We can only repeat the difficulty of saying how much of this had been caused by force or intimidation.

[4] Deb. i, 351-2.

[5] The minority often complained of their position in this respect. See Deb., i, 274, 326, 521-2, 569; ii, 764.

[6] Authority of Mr. Joseph M. Cushing, a surviving member of the Baltimore City delegation.

[7] For an opponent's estimate of Mr. Stirling, see Deb., iii, 1748.

for the most modern and advanced measures, and aroused little opposition or jealousy on the part of the county members.

The thirty-five Democrats who formed the minority, bravely, tenaciously and ably upheld their principles in a manner worthy of admiration, but always professed their loyalty to the Union as embodied in the Constitution of the United States. Their position was based on state's rights, a policy of conciliation toward the South, and, as far as possible, a continuation of political and industrial conditions as existent in the state and nation before the outbreak of the war, which they condemned as unnecessary and an oppression of the South. They asked if it was "any more treason for the South to subvert the Constitution by force of arms, than . . . for President Lincoln, with his army, to subvert the Constitution by force of arms."[8]

These members came entirely from the ten southern and Eastern Shore counties of Kent, Queen Anne's, Dorchester, Somerset, Anne Arundel, Montgomery, Prince George's, Charles, Calvert and St. Mary's. These were the counties which were usually designated by the Union men as "Rebel" and "Pro-Slavery."[9]

One of the majority members has since said in private conversation that the minority contained "a larger number of brilliant men for its size than any other body which has ever come together in a legislative capacity in Maryland." Though no one man stands out as their leader in the same dominating capacity as did Mr. Stirling in connection with the majority, perhaps David Clarke, of Prince George's comes nearer to this position than any other. His speeches in the Convention, when read at the present day, are of the greatest interest, as showing the attempt of a brilliant man of modern times to justify and perpetuate the institutions of a bygone age. In fact, this may be said of

[8] Deb., ii, 1357.

[9] "American," May 4, 1864.

a number of the minority members. Edward W. Belt, also of Prince George's, was an exceedingly strong man, in many ways one of the most advanced of his party, as his course on the "usury" question will show.[10] A third man from the same county, Samuel H. Berry, and also Oliver Miller, of Anne Arundel; James U. Dennis, of Somerset; James T. Briscoe, of Calvert, and John F. Dent, of St. Mary's, were all of great force and influence. With them should be mentioned Ezekiel F. Chambers, of Kent, who always acted with the minority, and at last definitely identified himself with them, although at first claiming to represent no party. Though elderly and usually of too great conservatism, yet his prominence is apparent when we observe that he had been sixteen years in the State Legislature and in Congress; had been a member of the Convention of 1850-1, and was about to be the Democratic candidate for Governor in the fall of 1864.

The minority, in addition to opposition in debate and by vote, showed great ingenuity in falling back from one position to another, as soon as the former was made untenable. A good instance of this will be seen in the emancipation question, where a continuation of slavery, state and national compensation, and negro apprenticeship were advocated in turn. Both parties were very ready to call for the yeas and nays on leading questions, especially the minority, who desired to put their opponents individually on record as favoring the extreme measures which were passed. They also used tactics of delay in some instances, but with little success, as the majority could usually outvote them. Hence they did not carry this sort of opposition very far, knowing the final futility of any such attempts. At times vigorous complaint was made against the use of the previous question by the majority in order to shut off debate. This was largely during the latter half of the session of the Convention, when the work was being pushed with great activity.

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[10] See pages 82-83.

The first two months were mainly occupied with long and vigorous debate on the slavery and National allegiance questions, in which both sides expressed their views freely and often at great length. The majority frequently professed themselves as desiring perfect fairness,[11] and the records go to show that, as a rule, such was the case.[12] Considering the weight of the questions involved, and the close personal interest in them on the part of the members of the Convention, many of whom not only owned slaves, but had relatives and friends in the opposing armies, the debates show a remarkable lack of personal abuse and recriminations. This was at a time when the fiercest of campaigns were being waged by Grant and Lee in Virginia, and Sherman and Johnston in Georgia, while the state of Maryland itself suffered under an extensive invasion. In addition, the whole country was agitated over the political campaign preceding the presidential election of 1864, and charges of "lawless oppression" were answered with the terms of "traitor" and "Copperhead." It is pleasing to note that throughout the entire period of the Convention in Annapolis, the personal relations of the members were most pleasant. Great cordiality prevailed, and friendly discussion and quiet conversation on matters pertaining to the business of the Convention frequently took place as the members of the opposing parties met in their daily affairs outside the State House walls.

On Wednesday, April 27, as above stated, the Convention held its first meeting. Henry H. Goldsborough, of Talbot County, the State Comptroller, was elected president, receiving the entire vote of the fifty-eight Union men present. Ezekiel F. Chambers, of Kent, had been placed in nomination for the office by the opposition, but declined, and the twenty-one minority members did not vote. The remainder of the process of organization was speedily effected during the next few days. The standing com-

[11] Deb., i, 118, 207, 350.

[12] Deb., i, 569.

mittees, authorized on April 28, were appointed on May 4, and to them were at once referred the many suggestions that had already been made by various members, as to provisions to be embodied in the new Constitution. On the same day a committee of six from the Baltimore City Council, three from each branch, presented unanimous resolutions passed by that body, inviting the Convention to hold its sessions in Baltimore, and offering to engage a hall for that purpose at the expense of the city. There was a short debate as to the advisability of the step, it being urged that Baltimore would be a much more convenient place of meeting, for the Eastern Shore members in particular. Although the contrary ground was taken that it would be illegal to move the Convention from Annapolis, yet motives of expediency really prevailed, and the invitation was declined by a non-partisan vote of 51 to 35.[13]

On June 2 an unsuccessful attempt was made by several members to reconsider this action, but nothing further came of it.[14] On May 12, Mr. Kennard, of Baltimore City, made the report of the Committee on Rules.[15] This report embodied the usual rules governing legislative bodies, and was finally adopted with slight amendments on May 23.[16] Provisions for the Constitution were required to be passed by a majority of the members *elected* to the Convention, but this was afterwards changed by motion of Mr. Cushing, of Baltimore City, to a majority of those *present*.[17] The minority strongly opposed this, claiming that, as fifty members would make a quorum, twenty-six out of the ninety-six elected could thus put a final provision in the Constitution.[18] The first vote on the question was adverse, but being brought up again under a slightly different form, it was passed by a vote of 47 to 33, though several of the majority opposed the measure. The majority based their

[13] Proceedings, 19-21.
[14] Proc., 147; Deb., i, 300-1.
[15] Proc., 46-56.
[16] Proc., 90.
[17] Proc., 109-10, 115-8; Deb., i, 180-5, 202-12.
[18] Deb., i, 181.

main argument on the desire to expedite business. It should be added, that during the consideration of the report the minority made every possible attempt to have a large vote of those elected to the Convention required on all important questions, but their amendments to that effect were regularly voted down.[19] They thus lost all opportunity for delaying proceedings by absence from the Convention and like expedients.

Almost two months were consumed before the Convention had perfected its organization and passed the Declaration of Rights which contained the very important provisions in regard to slavery and allegiance. During the first five weeks of the session the debate was unlimited, both sides indulging in speeches of great length, but on June 2 the time was limited to one hour, the minority voting in the negative, as it seems to have been particularly desired that absolute freedom be allowed until the Declaration of Rights was disposed of.[20] The majority again urged expediency, and the usual arguments were successively brought up later, when the debate was further restricted, on July 7,[21] to thirty minutes, a two-thirds vote of the members present being necessary to allow the speaker to proceed. On July 29 a limit of fifteen minutes during the discussion of a basis of representation was imposed,[22] and definitely placed at twenty minutes on all questions on August 24.[23] On August 31 the absurdly small limit of five minutes was attempted but voted down, the negative vote being cast by the solid minority and several majority members. On July 7, Mr. Belt, of Prince George's, had offered the sarcastic motion that "there shall be no debate on any subject whatever," which was of course lost.[24]

The Convention adjourned over from June 4 to the 9th, on account of the Republican National Convention, to which several of its members were delegates. That body

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[19] Proc., 75-6. [20] Proc., 146-7; Deb., i, 293-300.
[21] Proc., 230-2. [22] Proc., 356. [23] Proc., 562. [24] Proc., 232.

met in the Front Street Theatre, Baltimore, on June 7, 1864. It adopted a platform strongly urging the prosecution of the war and endorsing the policy of the National Administration. After nominating Lincoln and Johnson, it adjourned on June 8.

The Convention again, on June 24, adjourned over till July 6, as a number of the members desired time to attend to personal affairs, especially the farmers, who had their crops to harvest.[25] Work had hardly been resumed, when the celebrated "Rebel Raid" occurred and interrupted proceedings for nearly two weeks more. This invasion of Maryland deserves some attention, as it was of great consequence to the people of the state, and caused a bitter clash between the opposing sides in the Convention.

During the latter part of June, 1864, General Lee sent General Jubal A. Early with a force, probably some fifteen thousand men, to move down the Valley of Virginia and make a demonstration against Washington, hoping thus to relieve the pressure of General Grant's armies upon Richmond. This force, after crossing the Potomac near Shepherdstown and Falling Waters, occupied Hagerstown on July 6, and its advance skirmished with Union troops as far as Frederick. On Friday, July 8, the main body occupied this town, and on the next day (July 9) met and defeated General Lew Wallace at Monocacy Junction. The Union force was estimated at between seven and eight thousand men, and was composed of those troops which General Wallace was able to collect in order to defend Baltimore. It behaved well in the battle which lasted nearly eight hours, but retreated in great disorder to Ellicott's Mills. The main Confederate force turned south and occupied Rockville, threatening Washington and skirmishing within sight of that city. A small cavalry force, of which Major Harry Gilmore was one of the commanders, was sent to operate north and east of Baltimore. It cut the

[25] Proc., 225-6; Deb., i, 743.

Northern Central Railroad near Cockeysville on July 10, and pushed across the country, cutting the telegraph wires on the Harford and Philadelphia turnpikes. A small detachment came down Charles Street Avenue and burned Governor Bradford's handsome residence five miles from Baltimore at an early hour on the morning of July 11. This was done as a retaliation for the burning of the residence of Governor Letcher, of Virginia, by a Union force under General Hunter.

There was skirmishing on the York Road at Govanstown, a few miles from the city, and also near Pikesville, but the main part of the force struck the Philadelphia Railroad at Magnolia Station, eighteen miles from Baltimore, and captured two of the morning trains from the city; also burning the Gunpowder River bridge. They soon after retired toward the west and joining the main body of General Early's army, the whole force recrossed the Potomac at Seneca and near Poolesville, carrying a large amount of booty with them. A levy of $200,000 had been laid upon Frederick and collected before the town was evacuated.[39]

The excitement throughout the state was most intense, but at no place greater than in Baltimore City, especially on Sunday, July 10, when it was learned that General Wallace had been defeated at Monocacy. The city was startled at an early hour of that day by the general ringing of alarm bells, and in a short time the streets were thronged with excited crowds. A joint proclamation was issued by Governor Bradford, who was in the city, and by Mayor Chapman, calling upon the citizens to rally at once to resist the invaders, and the City Council, by a joint resolution, appropriated $100,000 to aid in the defense. The call met with a ready response, and it was estimated that about ten thousand of the citizens of Baltimore were organized. Major-General E. O. C. Ord arrived in the city on Monday,

[39] See contemporary newspapers for further particulars.

and, by order of President Lincoln, assumed command of the 8th Army Corps, relieving General Wallace from that charge. Fortifications were rapidly thrown up and further preparations were hastily made, in anticipation of the threatened assault, but of course this never occurred, as General Early retreated soon after. It is said that after the first excitement there was great quiet and good order in Baltimore, affairs soon subsiding again into their usual channels. General Wallace was restored to his command on July 28.[27]

During this raid most of the Convention members left Annapolis, and no regular meetings were held for ten days. President Goldsborough and a few members remained in the town, and by meeting and adjourning from day to day, kept the organization of the Convention intact, till business was resumed on July 19. Mr. Goldsborough and several others also did duty in the fortifications of Annapolis. As a result of the invasion, some effect on the temper of the Convention was to be expected, and this was not long in appearing. On July 9, before the nearness of the danger caused the Convention to scatter, Mr. Cushing, of Baltimore, offered a resolution protesting loyalty to the Union, and "preferring rather than consent to the destruction of the Union of these United States, to have the whole land laid waste and its entire population destroyed, hoping that in the future, it might be resettled by some race of men more capable of appreciating and preserving Liberty and Union." Further, all sympathizers with the rebellion were denounced as "recreant to the faith of their Fathers, forsaken of God, and instigated by the devil." There was some difficulty in securing a quorum, as the attendance was small on that day, but in spite of a minority attempt to adjourn, the resolution was successfully passed.[28]

On July 19, immediately after business was resumed,

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[27] See contemporary newspapers for further particulars.
[28] Proc., 247-9.

there was another outburst of great anger on the part of the majority. By motion of Mr. Hatch, of Baltimore City, thanks were tendered to Ishmael Day, of Baltimore County, "for the heroic and gallant act in shooting down the traitor who dared to pull down the country's flag." Mr. Schley, of Frederick County, offered an order that the Convention request the President, "as an act of justice and propriety, to assess upon known sympathizers with the rebellion resident in this state, the total amount of all losses and spoliations sustained by loyal citizens of the United States resident in this state, by reason of the recent rebel raid, to compensate loyal sufferers." This was passed by a vote of 33 to 17, the minority solidly opposing it.[20] On the following day Mr. Belt offered a resolution that this order "was improvidently passed, and that the same be and is hereby rescinded," but it was overwhelmingly defeated by the majority members.[20] On this same day Mr. Stirling submitted resolutions which, considering the number of Southern sympathizers in Maryland, as the experience of the past two weeks had shown, demanded of the Government of the United States that all those refusing to take the oath of allegiance or who shall have been "proved to have taken part with or openly expressed their sympathy with the recent invasion of the state . . . be banished beyond the lines of the army or imprisoned during the war."[21] These resolutions were passed on July 21.[22] The minority consistently fought all these extreme proceedings, the resolutions being characterized as "unjust, extraordinary and inhuman,"[23] and they not only voted against them, but actively opposed them in debate, urging in particular that the Convention was exceeding its authority by thus acting in a legislative capacity. Mr. Belt vainly attempted to amend Mr. Stirling's resolutions by declaring that nothing contained therein should be taken to endorse any other theory of the

[20] Proc., 257-8. [20] Proc., 267-8; Deb., ii, 830-1.
[21] Proc., 265-6. [22] Proc., 273-7. [23] Deb., ii, 873.

war than that declared in 1861, in which state's rights had been guaranteed and the desire expressed to preserve the Union according to the ante-bellum conditions.[34] Mr. Sands, of Howard, well expressed the position of the majority members by saying: "It comes to the question whether you will give to the loyal people of the state of Maryland the power of the state, or whether you will allow the secessionists to force them to the wall and make them give up all their rights under the Constitution and the government or drive them from the state. For one, as a Union man, holding my allegiance to the government straight through, I prefer to be one of the men that shall live in Maryland."[35]

On August 5, Mr. Chambers, on behalf of the thirty-five minority members, presented a protest signed by all of them, in which they strongly condemned these various resolutions. In this protest they stated that the delegates to the Convention "were elected under a law of the state, to form a new constitution of civil government to be submitted to the people, and not to invite the inauguration of an unlimited military despotism in the state." The resolutions were condemned as being in direct conflict with many provisions of the Declaration of Rights as lately adopted. The protest closed by saying: "In behalf of the people we represent, and of all the peace-loving and law-abiding people of Maryland, and in behalf of all the fundamental principles of civil liberty and constitutional government, we enter this, our formal protest, against the said action of the said delegates to this Convention."[36]

The majority stigmatized this protest as discourteous to the Convention, and it was refused a place upon the journal by a vote of 42 to 26, although several of the Union members opposed this latter action, and five of them voted with the Democrats.[37] This closed the incident.

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[34] Proc., 273-5.

[35] Deb., ii, 826. For debate on the various resolutions, see Deb., ii, 800-1, 820-31.

[36] Deb., ii, 1128.

[37] Proc., 397; Deb., ii, 1126-38.

A point of much importance during the sessions of the Convention was the question as to the eligibility of certain members. It was commonly known that a number of them were ineligible, according to the Convention Bill, which imposed the same qualifications as those necessary to a seat in the House of Delegates. On July 7, Mr. Miller submitted an order requiring the Committee on Elections to make a report as to what the qualifications for a seat in the Convention actually were, but added that he meant this to be an entirely non-partisan measure, as it would equally affect both the majority and minority. This order was tabled by motion of Mr. Stirling, who stated that it would either accomplish nothing or else result in breaking up the Convention.[38] The Committee on Elections, which had been appointed early in the session, had as yet made no report, so on July 8 Mr. Chambers submitted an order requesting the committee to do so as soon as possible. A favorable vote on this was at once secured, but Mr. Cushing's order instructing the committee to report all members duly elected was lost by a vote of 17 to 47.[39] On August 3 the committee, consisting of of four Union and two Democratic members, unanimously reported all the members as duly elected.[40] This report was concurred in on August 9 by a vote of 55 to 4, Mr. Miller being the main opponent and basing his adverse argument on legal technicalities.[41] On August 6 Mr. Belt had offered a resolution declaring, for reasons stated, that eleven named members were ineligible to a seat in the Convention, himself being one of the number.[42] This was indefinitely postponed on August 9, and never appeared again.[43] It is worthy of note that, although two members of the minority, Mr. Miller and Mr. Belt, were the ones who insisted on the inquiry and led in this "strict construction" movement, the final action was

[38] Proc., 229; Deb., ii, 796.
[39] Proc., 240-2.
[40] Proc., 385-6.
[41] Proc., 435-6; Deb., ii, 1195-1201.
[42] Proc., 414-5.
[43] Proc., 436.

entirely non-partisan, it being the general sentiment of the Convention that the people in their sovereign capacity had the right to elect whomsoever they pleased to represent them in that body, even the Convention Bill to the contrary, though some based their position on different interpretations of that instrument.[44]

The Convention held one session a day till July 21, when it was decided to meet in the evening as well, on every working day except Saturday.[45] These latter sessions were not attended very well as a rule, there being no quorum present on eight different evenings. There was much delay in the work of the Convention, the larger part of the new Constitution as finally adopted being passed during the last six weeks of the session. The long discussion of the Declaration of Rights and the interruptions consequent upon the pressure of outside affairs as stated above, were largely responsible for this. As the people of the state were beginning to show impatience,[46] the general result was haste towards the end, although this caused additional mutterings. Three sessions were held each day during the five days preceding adjournment.

The Convention finally adjourned on Tuesday, September 6, 1864, having passed a resolution that, in view of the uncertain condition of affairs in the state "which might interfere with the expression of the popular will on the day to be fixed for voting on this Constitution," the adjournment was subject to the call of the president, and in case of his death or disqualification, Messrs. Schley, Pugh, Stockbridge and Purnell were authorized, in the order named, to act as president and call the Convention together.[47]

A resolution of thanks to President Goldsborough for his "dignified, efficient and impartial discharge of the duties of the chair" was offered by Mr. Chambers, and unan-

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[44] Deb., ii, 764-8; iii, 1730.
[45] Proc., 272.
[46] "American," June 10, Aug. 2; Frederick "Examiner," June 22; Deb., i, 98, 148, 204-5, 322-4.
[47] Proc., 600, 773.

imously adopted, several of the minority leaders heartily endorsing it.[48] The order in the Convention had been exceptionally good.[49]

The sessions of the Convention had lasted four months and ten days, and the average daily attendance had been about sixty. The largest number present on any one day was ninety-one, on June 1, and the smallest was seven, on July 18, at the close of the period of Early's invasion. There was numerous attempts to compel the attendance of members, to publish the names of absentees, or to deduct pay for unexcused absence, but they all came to nothing, being usually tabled by good majorities.[50]

As stated above, there was no inducement for the minority to attempt to delay proceedings by absenting themselves from the Convention, as the majority were numerically large enough to transact business without any aid from their opponents, after the rules of order had been modified to permit the adoption of a provision by a majority of the members present.

After some vacillation and delay, showing that there must have been some compunctions of conscience on the part of several members, the Convention followed the example of the preceding legislature (1864), and by a small majority, voted themselves $100 extra mileage.[51] They based this action on the clause in the Convention Bill allowing them the same mileage as the Legislature, and thus threw on the other body any blame for an illegal proceeding. This action was entirely non-partisan, the leading members of both sides dividing into opposing groups on the question.

It should be added, that in compliance with the Convention Bill the debates and proceedings of the Convention were well reported, and in point of excellence far exceed many of the other state documents and reports of that time.

Having taken this survey of the sessions of the Conven-

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[48] Proc., 709; Deb., iii, 1852.
[49] Deb., iii, 1757.
[50] Proc., 78, 89, 157, 162-3, 183, 286, 498.
[51] Proc., 707, 715-8.

tion and its workings as a whole, we now come to the far more important consideration of the results as shown in the new Constitution submitted to the people.

The first report made by the standing committees having in charge the various provisions for the Constitution was that on the "Declaration of Rights" on May 12.[52] As reported, and, in fact, as finally adopted, it was largely identical with the original "Bill of Rights" adopted in 1776, and incorporated in the Constitution of 1851.[53]

The consideration of the report was immediately begun, and consumed more time than any other part of the Constitution, occupying the larger part of the first half of the entire session of the Convention, for it settled some of the questions that had helped to influence the call for a new Constitution.

Foremost in importance was the new article of the report, which abolished slavery in Maryland, providing that "hereafter in this state, there shall be neither slavery nor involuntary servitude, except in punishment of crime, whereof the party shall have been duly convicted; and all persons held to service or labor as slaves, are hereby declared free."[54] This article was reached on June 17, and was hotly debated for a week. It is hardly necessary to review the various speeches, as the usual arguments were set forth by both sides, and though most ably presented, were largely a re-statement of those heard throughout the nation during the preceding hundred years. For instance, the minority would absolutely justify slavery by long quotations from the Bible, and the majority, on the other hand, would insist that the American slave system differed radically from that acknowledged by the Scriptures. In addition, these latter members denounced the institution as immoral, unjust, and an incubus upon the life of the state. Ancient

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[52] Proc., 58-64. (The minority report was defeated.)
[53] Deb., i, 185.
[54] Article 23 in report, Article 24 in t he Constitution as adopted.

and modern law, the Declaration of Independence and Constitution of the United States, the writings of the founders of the Republic, Supreme Court decisions, and various enactments since the formation of the Union—in fact, every conceivable authority or argument of any time or age was skilfully advanced by the advocates of the respective sides of the question. Although knowing the final outcome would certainly be against them, the minority stubbornly continued the fight till the last. They suggested the incorporation of provisions prohibiting the immigration of free negroes into Maryland, or any contracts with or employment of such persons, and providing for the colonization outside of the state of those negroes already within her borders.[55]

Also, Mr. Clarke offered a substitute to the emancipation article, which declared the slaves in Maryland free after January 1, 1865, but on condition that the United States Congress before that time should appropriate the sum of twenty million dollars to compensate the owners for their slaves.[56] This was of course opposed by the majority as it would in all probability have been a very successful means of indefinitely continuing the institution, and the amendment was withdrawn by general consent.[57] Mr. Brown of Queen Anne's offered another amendment providing for state assumption of the duty of the comfortable maintenance of the helpless and paupers emancipated, but this was voted down.[58] The final vote on the article as reported by the committee was taken on June 24, and the provision was adopted on strict party lines by 53 yeas to 27 nays.[59] This action, so momentous in its consequences, was but the fulfillment by the Convention of the Unconditional Union victories of November 4, 1863 and April 6, 1864, and although it had yet to pass the same ordeal of a further ratification by the people, slavery was practically dead from that hour.

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[55] Proc., 79-80. [56] Proc., 210. [57] Proc., 215.
[58] Proc., 219, 223-4. [59] Proc., 224-5.

Granting the fact that they should lose their slaves, the owners naturally desired to obtain some sort of compensation, and the minority never abandoned one form or other of this idea. This might be effected in two ways—by the state, or else by the nation. As state action could be controlled by the Convention to a great extent, while any reliance on Congressional action would be fallacious, the minority insisted on this former measure. On the other hand, as already stated, the spring campaign had been fought on this very question, with the result that nearly all the Union delegates were pledged against it with the exception of those from Baltimore and Howard counties, but even these were merely instructed to procure national compensation if possible. Also a majority caucus held in Annapolis on April 28 at the beginning of the session unanimously decided that the Convention was bound by the popular verdict to emancipation without state compensation.[60]

The minority nevertheless firmly maintained that slaves were or had been private property which should not be taken for public use without compensation.[61] The majority either denied this *in toto* or else held that slavery was a "nuisance," and no payment should be given for the abatement of it.[62] Other arguments were brought forth by the latter, including the statement that they were unwilling to saddle the state with a large debt for this purpose,[63] the Baltimore delegates in particular objecting on account of the fact that while a large part of the consequent increase of taxation would fall on the city, it would receive a small portion of the compensation, owing to the comparatively few slaves within its bounds. The majority report of the Committee on the Legislative Department,

[60] "American," Apr. 30, 1864.

[61] Deb., i, 596-721. [62] Deb., i, 590-1.

[63] The slaves were valued at from thirty-five to forty million dollars in 1860. Mr. Clarke's representative scheme of compensation involved a payment of about twenty-six millions (Deb., i, 656).

made a few days before, had contained the provision (section 40) that "The General Assembly shall pass no law, nor make any appropriation to compensate the masters or claimants of slaves emancipated from servitude by the adoption of this Constitution."[64] A minority report proposed a provision especially giving this power,[65] but it was voted down when introduced as an amendment.[66] Mr. Brown here again attempted to introduce an article providing for the maintenance of the emancipated slaves unable to support themselves,[67] but the majority defeated it, urging that the counties rather than the state should care for the local poor, and that the regular laws of the state dealing with this subject would be sufficient.[68] A motion to strike out the above section of the committee report failed, and it was adopted on July 25 by the vote of 38 to 13.[69] Mr. Briscoe of Calvert on August 31 made the last attempt of the minority to obtain state compensation by shrewdly offering an amendment to the provisions for the taking of the vote on the Constitution, which provided that at the same time there should be a separate vote on this question. This was promptly defeated with no debate of any consequence, the "previous question" being used.[70]

The minority doggedly turned next to the question of national compensation, and with slight success, for the majority members, although rather generally opposed to this as well, might have been put in an embarassing position had they openly come out against it. It will be at once remembered that one of the great traits of the Unconditional Union party, to which most of the latter belonged, had been uncompromising support of President Lincoln's entire policy, and that necessarily included his offer of national compensation for the slaves in the border

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[64] Proc., 193. [65] Proc., 209. [66] Proc., 304.
[67] Proc., 306. [68] Deb., ii, 954, 957; Proc., 309.
[69] Proc., 309-10, Article 3, sec. 36, of the Constitution.
[70] Proc., 669-70.

states. The Democrats in the Convention did not fail to push their advantage.

Early in the session Mr. Clarke had presented a resolution providing for a select committee to confer with President Lincoln on the subject,[71] but Mr. Negley of Washington offered an amendment including a declaration of emancipation in Maryland, and the whole matter was tabled without debate.[72] We have also seen Mr. Clarke's second unsuccessful attempt, in which he desired to make emancipation conditional upon national aid.[73] But as the question of slavery within the state was now definitely settled, the majority could no longer oppose action looking toward national compensation on the ground that it affected the final result in the state, so on July 26, Mr. Duvall of Montgomery submitted a provision to be added to the legislative report allowing the General Assembly to provide for the distribution of any money received from the General Government for the purpose of compensating the slave-owners. Mr. Jones of Somerset added an amendment including among the beneficiaries the owners of those slaves which had been taken under the authority of the President for use in military and other like enterprises, but this however was lost. Mr. Stirling now grasped the situation and offered a provision which seemed to satisfy both sides and was at once adopted with only one negative vote.[74] It was incorporated in the Constitution as Article 3, section 45, and provided that the "General Assembly shall have power to receive from the United States any grant or donation of land, money or securities for any purpose designated by the United States, and shall administer or distribute the same according to the conditions of the said grant." The motion that the General Assembly be required in addition to make some provision for perpetuating records of slave ownership was at once defeated on the ground that it was unnecessary.[75]

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[71] Proc., 134. [72] Proc., 147-8. [73] See page 53.
[74] Proc., 319-20. [75] Proc., 332-4; Deb., ii, 997-1000.

With the object of making as certain as possible any prospect of the desired governmental aid, the minority finally succeeded in having passed near the close of the Convention a resolution appointing a committee of seven to visit Washington and request of the President that he recommend to Congress an appropriation for the former slave-owners of Maryland.[76] The committee was duly appointed but the compensation was never received. It should be mentioned that the majority somewhat lessened any feelings of elation which the so-called "Rebel" slave-owners might feel at the prospect of receiving "Greenbacks" from the Government, by providing that the latter should first take the oath of allegiance before receiving any such sums."

However, the minority were not at all satisfied with this small gain, but continued to use every expedient to perpetuate at least a small part of the former slave-owners' rights. With this object in view they heartily supported the project of the apprenticeship, particularly to their former owners, of negro minors. This subject was, fortunately for them, brought forward by a member of the majority. Mr. Todd of Caroline, with several others of his party, favored such a step, though the larger part of them had been pledged against it as one of the campaign issues,[78] and opposed it as being either unnecessary under the existing state law for apprenticeship, or else a "concession to the slave power" which practically postponed the emancipation of minor slaves till they became of age.[79] The minority on the other hand held that apprenticeship would be only a merciful provision for many helpless children, and a small measure of justice to the former owners in giving some return for the previous support of minors during their infancy. Mr. Negley and Mr. Purnell were two of the Union members who held these views.[80] The

[76] Proc., 713-5. [77] Proc., 719, 771-2. [78] See page 32.
[79] Deb., iii, 1577, et seq. [80] Deb., iii, 1583, 1591-2.

movement for apprenticeship, although prominent in the minds of the members during a large part of the debate, particularly during the consideration of the questions of emancipation and compensation and of the legaislative department,[81] did not assume final form till August 26, when Mr. Todd submitted his proposition in the form of an amendment to the report of the Committee on the Judiciary Department, providing an additional section which made it the duty of the Orphan's Courts of the state to bind out till they became of age "all negroes emancipated by the adoption of this Constitution, who are minors, incapable of supporting themselves, and whose parents are unable to maintain them," with the addition that "in all cases the preference shall be given to their former masters, when in the judgment of said courts they are suitable persons to have charge of them." Amendments offered by Mr. Schley of Frederick and Mr. Stockbridge, respectively, requiring the consent of the "parents or next friend of the minor," and that masters should be bound to have their apprentices taught to read and write, were both lost. The section was divided for the vote, the first part allowing apprenticeship being carried by the vote of 51 yeas (including 28 majority votes) and 20 nays, and the second part, giving preference to the former owners, by 45 yeas (21 majority votes) to 27 nays.[82] On the next day (August 27) the Union men, who were evidently rallying their forces, introduced and carried by large majorities on a strict party vote two new sections, the first requiring that masters should take a stringent oath of allegiance before negro apprentices were bound to them, and the second prescribing heavy fines or punishment for those who detained in slavery any persons emancipated by the Constitution.[83]. This latter section was incorporated in the new Constitution,[84] but the former one, as well as Mr. Todd's

[81] Proc., 311-2.
[82] Proc., 593-8.
[83] Proc., 604-7.
[84] Art. iv, sec. 12.

proposition, was finally reconsidered and defeated on September 2. The yeas and nays were demanded in the vote on the main proposition and showed that a number of the minority were now against it, the cause of this change being in all likelihood the same as that given by Mr. Chambers, who now opposed the proposition as "encumbered with loyalty oaths." [85]

From the above results of the action on the slavery and emancipation questions it can be seen that although the minority skilfully advocated one point after another, and tried their best to secure some of the old privileges from the general ruin that threatened them, they were overpowered and defeated on every point of importance, and had only the poor consolation of a vague chance of national compensation which after all never came to pass.

A second great question involved in the Declaration of Rights, and one which vitally affected several of the provisions of the Constitution, was that of allegiance to the United States. The report of the committee contained the following as Article 4 [86]—"the Constitution of the United States, and the laws made in pursuance thereof, being the supreme law of the land, every citizen of this state owes paramount allegiance to the Constitution and Government of the United States, and is not bound by any law or ordinance of this state in contravention or subversion thereof."

This declaration, enjoining upon the citizen a proper allegiance to the Constitution of the United States, which presupposes allegiance to the Government when constitutionally conducted, thus contained in addition the dangerous principle of absolutely denying any original or inherent rights on the part of the State of Maryland, which would enable it to make the least opposition to any acts the National Government might see fit to commit. While the

[85] Proc., 689-91; Deb., iii, 1797-1800.
[86] Proc., 58. (Article 5 in Constitution as adopted.)

tendency of the present day is to cede more and more authority to the National Administration, yet there is certainly no disposition to take away all inherent power from the states as such, or vest in the Federal Government all authority not absolutely guaranteed to the state by the United States Constitution. This last is clearly the result to which the article tended.

This movement on the part of the majority was the direct outcome of the war as caused by the assertion of state's rights on the part of the South, and as waged according to the necessarily radical measures of Mr. Lincoln. Though evidently subject to the greatest abuse, it was in reality an attempt to assert the absolute indivisibility of the Union, and the paramount authority of the National Government when acting within the letter of the Constitution.

The members of the minority in the Convention, most of whom were firm believers in the doctrine of state's rights as held by the South, and in a large measure of sovereignty vested in the states as such, in some cases even went so far as to practically justify the South in its action on the question. They were naturally much aroused by this enunciation of paramount allegiance to the National Government, and were unable to condemn the article in sufficiently strong terms.[87] The debate on the article was long and brilliant, consuming a large part of the time for over two weeks, and was a careful treatment of the history of our country from earliest colonial times down to the causes of the war, as well as a review of the growth of justice and freedom from the days of Runnymede to the present time. Although the question was touched upon to some extent during the consideration of other subjects throughout the entire session of the Convention, Mr. Clarke on June 1 opened the regular debate

[87] A minority report from the committee condemned this article in addition to the one embodying emancipation. (Proc., 63-4.)

on the article in a masterly speech of several hours duration.[88] He began by offering an amendment in part declaring "allegiance to the Constitution and Government of the United States within the limits of the powers conferred by that Constitution," and giving to the State of Maryland sovereignty in so far as it is not restricted by the Constitution.[89] The gist of his argument was that the states were sovereign as states, but that they had yielded up a sufficient amount of their sovereignty to the General Government to deprive them, among other things, of the power of seceding from the Union, and that the article as reported specifically deprived the states of that measure of sovereignty which was inherently theirs. This may be taken as the average position of the minority on the question, for although some, as above stated, went further in their assertion of state's rights, yet others stopped short of it, while all protested their personal loyalty to the National Constitution.

The position of the majority is so well given by the article itself that there is no necessity of restating it. Mr. Stirling closed the entire debate on this question with one of the finest speeches in the Convention,[90] his aim being to vindicate the position of the majority, not only by upholding the doctrine of absolute national sovereignty, but by stating that the "paramount allegiance" set forth in the article as reported was merely an old and commonly recognized principle of government restated, perhaps in a novel form, but given in this way in order to meet the questions as to its very being which had been raised during the last few years in consequence of the momentous events that had happened. The declaration of this principle should be placed in the "Declaration of Rights" since the relation of the person to the National Government was one of the dearest rights pertaining to the individual. The majority tenaciously held to the article as reported, and would take

[88] Deb., i, 273-92. [89] Proc., 144-5. [90] Deb., i, 521-32.

nothing less, for they evidently desired by this action to strengthen the hands of the President and put Maryland in the position of officially endorsing his administration.[91] This political consideration should not be forgotten, especially as the contemporary excitement incident to Mr. Lincoln's candidacy for a second term may have influenced the Convention. The result was, that Mr. Clarke's amendment was voted down, and also several others by means of which the minority attempted to mitigate the force of the article,[92] and this latter was finally adopted on June 16 by the party vote of 53 to 32.[93]

The third in importance and last of the new articles incorporated in the "Declaration of Rights" was that introduced by Mr. Abbott of Baltimore City on June 11, and adopted without debate on July 7, after a slight change of phraseology.[94] It declared—"That we hold it to be self-evident that all men are created equally free; that they are endowed by their creator with certain unalienable rights, among which are life, liberty, the enjoyment of the proceeds of their own labor and the pursuit of happiness." It was merely a broad statement of the principle involved in the article abolishing slavery.

Another very interesting change was that made in Article 2, which declares the "unalienable right" of the people to "alter, reform or abolish" the form of government which originates from them. The words contained in the old Constitution of 1850-1[95] which limited this popular right to the "mode prescribed" in that document were omitted. This action was not taken on strict party lines, for although nearly all the members opposing it were of the minority, yet a number of them rose above the rigid

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[91] See Proc., 209, for an order introduced by Mr. Hatch, of Baltimore City, with this special end in view.
[92] Proc., 150-1, 199-201.
[93] Proc., 204. (Article 5 in the Constitution.)
[94] Proc., 173, 233-4. (Article 1 in Constitution.)
[95] Declaration of Rights, Article 1.

constructionism so prevalent among the members of this last-named faction, and voted in the affirmative.[96] The change was evidently the direct result of an argument which had been most skilfully used against calling a Convention during the campaign of the preceding spring,[97] and was based not only on the above-mentioned clause of the "Declaration of Rights" of the old Constitution, but on Article 11 of that instrument which provided that "It shall be the duty of the Legislature, at its first session immediately succeeding the returns of every census of the United States, hereafter taken, to pass a law for ascertaining, at the next general election of Delegates, the sense of the people of Maryland in regard to the calling a Convention for altering the Constitution." As we know, the Legislature of 1861-2 had failed to do this,[98] hence it was held by some that the succeeding body of 1864 had exceeded its authority in framing the Convention Bill, and that the Bill was unconstitutional. The advocates of the measure had at once answered the argument by taking their stand on the absolute sovereignty of the people, and their right of revolution as a last resort, urging that the acceptance of the Convention Bill at the election was sufficient to make it the supreme law of the land. This was the line of argument followed during the debate on the revision question in the Convention, it being stated in addition that it might with equal ease be proved that the Constitutional Convention of 1850-1 had been revolutionary, as it had not been called according to the provisions of the Constitution of 1776.[99]

The other facts of importance which should be mentioned in connection with the "Declaration of Rights" as adopted are, first of all, that Article 7 still confined the right of suffrage to the free *white* male citizens. Again, the general sentiment of the Convention was without re-

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[96] Proc., 90, 94-6; Deb., i, 133-46, 149-60. [97] Deb., i, 134, 390.
[98] See page 13. [99] Deb., i, 140-1, 150-5.

gard to political lines, largely opposed to any poll-tax,[100] so the prohibitory clause was retained in Article 15 with a slight change of phraseology.[101] Article 22 limited the declaration against compulsory evidence to criminal cases thereafter, in order to conform to the laws as it stood in the Code, by which any party might in any civil case be compelled in a Court of Common Law, as well as in Equity, to give evidence against himself. Article 27 was changed to allow forfeiture of estate for treason, a thing heretofore not allowed in Maryland for any cause.[102] The minority of course opposed this change, Mr. Chambers in particular leading in the debate against it, the ground taken being that it would be an inhuman and unjust treatment of the innocent wife and children of a man convicted. Mr. Clarke made an effort to amend the article by having the forfeiture of estate only continue during the life of the person convicted, but was unsuccessful,[103] as the majority could not leave open this chance for future questioning of the various confiscations of "rebel" property. Article 31 changed the phraseology in regard to quartering soldiers in time of war, by providing that the manner should be "prescribed by law," thus corresponding literally with the third amendment to the Constitution of the United States. The words formerly used had been "as the Legislature may direct."[104] The requirement of a test oath of allegiance both to Maryland and the United States, was inserted in Article 37, which treated of the tests or qualifications required for office. The minority opposed this. An additional change was made in the same article by omitting the word "Jews" and allowing all persons, with-

[100] Deb., i, 168-80, 190-201, 217-20. Mr. Jones, of Somerset, favored an income tax (Deb., i, 188-9).

[101] Proc., 106-8, 110-4, 123-5.

[102] Article 24 in Constitution of 1850-1.

[103] Proc., 131, 138-41; Deb., i, 239-47, 249-70.

[104] Proc., 158-9; Deb., i, 356-60 (observe the different numbering of the articles in the report of the committee, etc.).

out distinction to make a declaration of belief either in the Christian religion, or in the existence of God, and in a future state of rewards and punishments.[105] Article 40 added to the provision for the liberty of the press a clause making a person responsible for the abuse of this right.[106] Article 43 declared the encouragement of a judicious system of general education to be among the duties of the Legislature, and Article 45 prohibited only the Legislature from altering the Constitution except in the manner prescribed or directed. This left to the *people* the inalienable right of changing their form of government and thus conformed to Article 2, as modified in the manner stated above.[107]

To sum up, it should be said that the changes in the "Declaration of Rights," as given above, show first a decided movement toward an increase in the civil liberty of the individual by the abolition of slavery, the vesting of final sovereignty in the people, and the broadening of the religious test in an oath or affirmation. Secondly, there was a somewhat counter tendency toward strong centralization of power in the National Government, and also an entire submission to and approval of the war policy of President Lincoln.

The Constitution itself, in establishing a form of government for the State of Maryland as contrasted with the previous document of 1850-1, shows a number of interesting changes, which were in part the immediate results of the Civil War, and in part caused by a growing spirit of progress in the state, which was at times reflected in the Convention, where provisions were suggested which would have been years in advance of the average opinion of the people. In considering these various changes the order of

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[105] Proc., 165-6; Deb., i, 371-82.

[106] Proc., 167-9, 172-3; Deb., i, 393-400 (articles "39" and "45" [46] combined into Article "40"—Proc., 434).

[107] See pp. 62-63.

the Constitution will be followed in part, and in part a grouping by subjects.[108]

Article 1, on the Elective Franchise, largely followed the plan of the corresponding article in the preceding Constitution. It also contained one of the best of the new provisions, that requiring the General Assembly to provide for an uniform registration of the names of the voters of the state, a thing as yet unknown in Maryland. This registration was made the evidence of the qualification of citizens to vote at all elections.[109] In relation to bribery, section 5 of the same article added to the former prohibitive provision a clause disfranchising a person guilty of fraud in procuring for himself or any other person a nomination for any office. This was the result of a motion by Mr. Stockbridge, who desired to incorporate in addition the application of this provision to primary meetings and nominating conventions, an advanced reform movement only beginning to be considered at the present day. The Convention voted it down as impracticable.[110]

The oaths of allegiance for voters and public officials as contained in this article were perhaps the most unpopular feature of the Constitution, and did more to cause its reluctant acceptance by the state and its final abrogation in 1867[111] than any other one thing in connection with it. They were of course the direct outcome of the war and only applicable to the conditions arising at that time. General Schenck's much-discussed order governing the elections of 1863, the various invasions and raids into

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[108] The entire new Constitution, as adopted, may be found in Proc., 721-70.

[109] Proc., 434, 513, 686; Deb., iii, 1784. This provision was carried out by the Legislature of 1865. See Steiner, "Citizenship and Suffrage in Maryland," pp. 47-8.

[110] Proc., 510-1; Deb., ii, 1381-3. Mr. Miller had desired to make voting compulsory by an article in the "Declaration of Rights," Proc., 111-2.

[111] The present Constitution of Maryland was formed in that year.

Maryland by Southern forces during the last two years, and the many instances of divided sympathy consequent upon the position of Maryland as a border state; all these facts may be considered as exerting a strong influence toward this radical action on the part of the majority members. The report handed in by the four Union members of the Committee on Elective Franchise [113] had contained a test oath as a qualification for office, which was afterwards amended to make it more stringent. A minority report handed in by Messrs. Brown of Queen Anne's and Marbury of Prince George's [113] had contained merely an oath of allegiance to the Constitution of the United States and the Constitution and laws of Maryland. Neither report contained a test oath for voters. Mr. Stirling on August 11 offered the amendments which were finally adopted as section 4, and prescribed the disqualifications arising under the war, and the additional oath for voters.[114] The provision, which was quite long, forever disfranchised and prohibited from holding office all those who had at any time been in armed hostility to the United States or in any manner "in the service of the so-called Confederate States of America," who had voluntarily gone South for that purpose, had given aid, comfort, countenance or support to the enemies of the United States or adhered to them by contributing to them, or "unlawfully sending within the lines of such enemies money or goods or letters or information," or "disloyally held communication with them." In addition there were included under the ban all those who had "advised any person to enter the service of the said enemies, or aided any person so to enter or who [had] by any open word or deed declared [their] adhesion to the cause of the enemies of the United States, or [their] desire for the triumph of said enemies over the arms of the United States." These disqualifications could be removed only by service in the military forces of the Union,

[113] Proc., 431-3. [113] Proc., 449-51. [114] Proc., 463-8.

or by an act of the General Assembly passed by a two-thirds vote of all the members elected to each house, and restoring the offender to his full rights of citizenship. The "Officers of Registration" and "Judges of Election" were "carefully to exclude from voting, or being registered, all persons so as above disqualified." The hands of these officials were strengthened by the additional clause that "the taking of such oath shall not be deemed conclusive evidence of the right of such person to vote," thus leaving to them individually the final judgment in the matter. In order to cover the first election under the Constitution and the subsequent registration for which the Legislature was to provide, the above-given oath was required of all voters and the Judges of Election must state in the returns that this provision had been complied with.[115] Mr. Berry of Prince George's attempted to insert a clause limiting the imposition of the oath to cases where there was a challenge "by a legally qualified voter, resident of said district or ward in which the vote is offered," but it was voted down 12 yeas to 47 nays.[116] A similar fate had befallen the attempt of Mr. Davis of Charles to declare in the first section of the same article that "all persons [should] be considered loyal who [had] not been convicted in some Court of Law of disloyalty."[117]

Mr. Stirling also offered the provision which was adopted, with several amendments, and contained an equally stringent oath of office.[118] It required of "every person elected or appointed" to any office under the Constitution or laws pursuant thereto, that he should not only swear allegiance to the Constitution, Laws, and Government of the United States "as the supreme law of the land, any law or ordinance of this or any state, to the contrary, notwithstanding," and that he had not used any unfair meas-

[115] Mr. Stirling distinctly stated this object, Deb., ii, 1272.
[116] Proc., 466-7. See Nelson, "Baltimore," p. 573.
[117] Proc., 462-3.
[118] Proc., 472-4, 505-8 (Section 7 in Constitution).

ures, of bribery or illegal voting, but in addition that he had "never directly or indirectly by word, act, or deed, given any aid, comfort or encouragement to those in rebellion against the United States or lawful authorities, thereof," but that he had been truly and loyally on the Union side. Further, that he would to the best of his abilities protect and defend the Union and "at all times discountenance and oppose all political combinations having for their object such dissolution or destruction." Mr. Scott of Cecil had offered an amendment to the original report requiring the officer-elect to swear among other extravagant things that he had "uniformly and at all times denounced [those in rebellion] not only as rebels against and traitors to their country, but as enemies of the human race"! However, Mr. Stirling's amendment was the one which superseded this latter.[119] An additional provision offered by Mr. Stirling was adopted, which required all those in office under the preceding Constitution to take the above oath of office within thirty days after the new instrument had gone into effect. The office should be *ipso facto* vacant if the incumbent should fail to fulfill this condition.[120]

As was to be expected, the minority stoutly opposed these oaths or tests, declaring them to be especially directed against the large number of true Union men who opposed the "usurpations" of the National Government.[121] An unsuccessful series of bitter and sarcastic amendments was offered by Mr. Jones of Somerset putting the observance of the "Ten Commandments" in the test oath, and the affirmation that the person had "faithfully supported the Constitution of the United States against all violations of the same whether in the Northern or Southern States, or in any department of the Government of the United States, civil or military."[122] A more serious attempt to

[119] Proc., 422-4, 505-8.
[120] Proc., 512-3.
[121] Deb., ii, 1334.
[122] Proc., 449-500.

provide that the prescribed oaths be in force only till the end of the war was voted down, 47 to 23.[133]

The debate on all these questions was more bitter than at any other time during the Convention, with perhaps the exception of the consideration of the soldiers' vote and of the mode of submitting the new Constitution to the people.[134] The minority held that the oaths largely tended to continue after the war had ceased the conditions co-existing with it, and would go far to prevent the subsequent reconciliation necessary to the peace and prosperity of a reunited country. They also rightfully objected that it gave far too much power to the Judges of Election, and offered every opportunity for unfairness and abuse.[135]

Another strong point was that it was eminently improper to compel the entire support of the National Government, a requirement especially irritating to many who held that the coercion of the South was in violation of the Constitution of the United States.[136]

The majority held that there was nothing unusual in the oaths when the circumstances in which the state was placed were considered, and that no one could faithfully, zealously, and honestly serve the State of Maryland as an officer, who could not undergo the prescribed tests.[137]

We of this day, while admitting the force of the arguments of both sides in the Convention, must necessarily take a middle course in forming our judgment, and conclude that the majority were right in providing test oaths of some sort as a war measure, but that they made a great mistake in the extent of their requirements and the method of enforcing them.

Other points of interest to be noted in connection with the treatment of the franchise are that it was again in this connection restricted to white male citizens, and that there were unsuccessful attempts to allow ex-convicts to vote

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[133] Proc., 511-2.
[134] Deb., ii, 1262-89, 1299-1303, 1330-81.
[135] Deb., ii, 1266, 1335.
[136] Deb., ii, 1359.
[137] Deb., ii, 1358-9.

after a certain period of good behavior, or consequent upon legislative action.[128] The provision which required the General Assembly to provide by law for taking the votes of soldiers in the army of the United States serving in the field[129] will be considered later, as the main opposition centered around this entirely new provision when it was applied to the vote on the ratification of the Constitution.[130]

The new instrument showed a number of changes in regard to state officials, and the positions they occupied. In the Executive Department the old "Gubernatorial Districts," from each of which the Governor was chosen in turn,[131] were abolished, thus doing away with a useless and cumbersome institution. The salary of the chief executive was raised from $3600 to $4000.[132] A proposal to give him the veto power was speedily tabled by the Convention, which considered this an unnecessary departure from the custom of the past.[133] As the judiciary and most of the other state officers were to be elected his appointing power was small.

The office of Lieutenant-Governor was created—an entirely new departure for the State of Maryland. The same qualifications and same manner and time of election were prescribed as in the case of the Governor. This new officer was to preside over the Senate with the right of a casting vote in case of a tie, and was also to succeed to the office of the Executive, in case of the "death, resignation, removal from the state, or other disqualification" of the latter. He was to receive no salary but the same compensation as that allowed the Speaker of the House of Delegates during the sessions of the General Assembly.[134] The creation of this office was an idea which originated in the Conven-

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[128] Proc., 474-5. [129] Art. 1, sec. 2. [130] See pages 88-90.
[131] There were three districts—Eastern Shore, Western Shore, and western part of the state. See Cons. 1850-1, Art. ii, sec. 5.
[132] Article ii, section 22. [133] Deb., ii, 898. [134] Art. ii, sec. 6-10.

tion, and had previously been little discussed in the State, if at all.[125] The minority members of the Committee on the Executive Department had brought in a report against this new office [126] and although Mr. Smith of Carroll and a few others of the majority members joined with the other political faction in opposing the office as unnecessary, the measure passed without much difficulty or delay.[127] Those favoring it brought forth as the reasons for their action the fact that the provision gave an additional popular feature to the Constitution by making the people doubly secure of the choice of their chief executive, and brought the Government of Maryland in line with those of a majority of the states of the Union.[128] A move to abolish the office of Secretary of State and combine its duties with those of the Lieutenant-Governor was quickly defeated.[129]

Another new state office created was that of Attorney-General, which also was to a great extent an idea of the Convention members.[140] This office had existed before 1851, but was abolished by the Constitution of that year.[141] The reason for that action, as given by Judge Chambers,[142] who had been a member of the Convention which framed the instrument, was not from any belief that the office was unnecessary, but purely from personal considerations, having relation to an individual who it was supposed was going to obtain the office. There was now practically no opposition in the Convention to its re-establishment, and it was provided [143] that the Attorney-General be elected by the people for a term of four years, that to be eligible he must have resided and practiced law in the state for at least seven years next preceding his election, and must perform the usual duties required of such an officer. The salary was $2500 a year. There was no change of any

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[125] Authority of Mr. Joseph M. Cushing. [126] Proc., 448-9.
[127] Proc., 492-3. [128] Deb., ii, 1317-9. [129] Proc., 493.
[140] Authority of Mr. Joseph M. Cushing.
[141] Art. 3, section 32. [142] Deb., iii, 1463. [143] Art. v, secs. 1-6.

consequence in regard to the provisions for State's Attorneys.[144] In regard to the Treasury Department[145] it is hardly necessary to say more than that the provisions of the old Constitution were closely followed with only a few minor changes in phraseology. As before, the Comptroller was to be elected by popular vote for a term of two years, and at each session of the Legislature the State Treasurer was to be chosen by joint ballot, to hold his office for a like term. The salary of both officers remained at $2500 a year.

The Commissioner of the Land Office was now to receive the fixed salary of $2000 a year, and pay into the Treasury all fees received, instead of retaining them as his compensation according to the former provision.[146] There was some question as to the desirability of abolishing this office, but it was finally retained as a necessary part of the administration.[147] The salary of the State Librarian was increased from $1000 to $1500, and the Legislature was to pass no law whereby he was to receive additional compensation.[148] This action was intended to give that officer an adequate salary and abolish extra Legislative appropriations for certain duties performed.[149] The "Board of Public Works" was entirely reorganized. The old provision for electing four "Commissioners" from a like number of districts into which the state was divided[150] was abolished, and the board now consisted of the Governor, the Comptroller and the Treasurer, who were to receive no additional compensation for the performance of their duties in this connection. This board superintended the interests of the state in internal improvement.[151]

The other state officials will be mentioned in connection with the more important departments of administration with which they were connected.

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[144] Art. v, secs. 7-11. [145] Art. vi. [146] Art. vii, sec. 3.
[147] Deb., ii, 1090-4. [148] Art. viii, sec. 4. [149] Deb., ii, 1101-9.
[150] Cons. 1850-1, Art. vii, secs. 1-3. [151] Art. vii, secs. 1-2.

The article dealing with the Legislative Department (III) showed a number of changes, most of them in the line of improvement. In this connection, the most important question of all was that of basis of representation, concerning which there had been much complaint throughout the state, especially on the part of Baltimore City and the northern and western counties. In 1851 the principle of representation according to population had been adopted for the first time,[152] but with the restriction that Baltimore City should have only four more members than the largest county. At the same time the entire population, white and black, slave and free, was made the basis. The above-mentioned parts of the state justly condemned all this, which gave to the southern, slave-holding counties an unfair measure of power and the practical domination of the state.[153] As can be well imagined, the majority members of the Convention, particularly those from Baltimore City, were determined to change this system entirely. The minority, coming altogether from the more-favored section of the state, naturally fought the move with all their might, particularly as they would be helped in some measure by the county members of the majority, who were evidently unwilling to have the basis placed entirely on population, for the reason that in this case Baltimore City would be given too much power for their liking. Under these circumstances, the compromise was effected according to which the basis of population was applied by an artificial rule, limiting Baltimore City and the larger counties, but with the result of allowing the city a larger representation than heretofore. The entire majority, however, joined together in a shrewd political move and increased the reduction of the political power of the southern

[152] A constitutional amendment in 1837 had only partially incorporated this principle.

[153] See Nelson, "Baltimore," p. 157, for a quotation on this subject from a speech of Hon. Henry Winter Davis; also see newspapers of 1863-4.

counties consequent upon the above, by making the white population of the state the exclusive basis of representation in the House of Delegates.

Early in the session of the Convention Mr. Clarke offered resolutions to the effect that it was "inexpedient . . . . to adopt a system of representation based exclusively upon population," and recommending instead that this principle be applied to the counties, and then four more delegates be given to Baltimore City than would fall to the largest county. A plan of apportionment also submitted by Mr. Clarke divided the county population by seven thousand, giving Baltimore County, the most populous, a representation of eight, and consequently twelve to the city, the entire number of delegates to be eighty. Failing this plan, if the whole state was to be represented according to population, districts were to be substituted in Baltimore City. These resolutions were referred to the Committee on Representation.[154] Mr. Belt submitted the proposition that the entire state be divided into electoral districts, and this was the ground on which the minority took its stand.[155]

Mr. Abbott of Baltimore City on May 27 made the report of the six Union members of the Committee on Representation, which furnished the foundation of the compromise plan that was finally adopted as above stated.[156] The three Democratic members handed in a minority report embodying Mr. Clarke's plan of giving the counties representation according to population, and Baltimore City four more delegates than the largest county.[157] This was voted down by the party vote of 26 yeas to 46 nays.[158]

The minority, as already stated, now skilfully took its stand on the electoral district plan, which would tend to slightly diminish the overwhelming party influence of the larger counties and Baltimore City in particular, by affording opportunity for the minor political party (at this time

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[154] Proc., 26-7, 31-3. [155] Proc., 88. [156] Proc., 120-1.
[157] Proc., 122-3. [158] Proc., 351.

of course the Democratic) to secure the election of representatives from those districts in which it might be strong, whereas it would perhaps be defeated entirely if the vote of the whole county or city were thrown together. They urged as their main argument in favor of this method that every voter throughout the state would thus cast his ballot for one delegate, while under the other plan the citizen in the smaller counties might vote for only one or two delegates, and the citizen in Baltimore City or a larger county for eight or ten, or perhaps more. This second plan was lost,[180] and the minority now turned their attention to lessening the representation of Baltimore City, and increasing that of the smaller counties as much as possible.

As finally adopted,[180] the representation was according to the following plan:[181] Baltimore was divided into three legislative districts, and each one of these districts,[182] as well as each county of the state, was to be represented by one Senator, elected by the people for the term of four years, subject to a classification by which the election of one-half of the entire number should occur every two years. The apportionment of the Delegates was as follows: for every five thousand persons or fractional part over one-half, one Delegate to be chosen until the number for each county and legislative district of Baltimore City should reach five, above that number one delegate for every twenty thousand persons or larger fractional part thereof, and after this, one for every eighty thousand persons or larger fractional part. Until the next census was taken the representation was to be as specifically provided in the Constitution, which gave Baltimore City altogether eighteen delegates,[183] and sixty-two delegates to the counties. A sharp struggle occurred on the representation of

[180] Proc., 352, 360-1.
[180] Proc., 352, 362, 639-42.
[181] Art. iii, secs. 2-4, 7.
[182] Baltimore had hitherto only one senator and ten delegates. The committee report had provided twenty-one delegates for the city (Proc., 120-1).
[183] See note, preceding page.

Baltimore and Kent counties. The latter county fell only 153 short of the necessary population required for two delegates,[164] and the former claimed an additional delegate for the reason that its population of 46,722 placed it within the arbitrary twenty-thousand rule, so that it had only six delegates, one more than Allegany for instance, which had 19,507 population, less than half of that of Baltimore County. It was finally decided near the close of the Convention to give Kent the extra delegate, but Baltimore County was held down to the letter of the rule adopted.[165]

It is interesting to note that throughout the consideration of this question the members of the majority made comparatively few speeches, and even then made no serious attempt to answer the extensive arguments brought forth by the minority.[166] These latter took the ground that their opponents were attempting to deprive the southern counties of their proper political influence,[167] to give Baltimore City the position of three counties,[168] and that as soon as slavery was abolished even a three-fifths rule held no longer, but the whole population became the joint basis of apportionment.[169] It was all in vain, however, for now they only succeeded in procuring the additional delegate for Kent. The majority were evidently not going to lose this opportunity of settling old scores, and in addition might have urged the old excuse that it was necessary to strengthen the supporters of the National Administration in Maryland by weakening the power of their opponents.

The article on the Legislative Department contained numerous other changes, mostly in the direction of limiting the power of the General Assembly to act in certain cases.[170] Taking the most important in the order in which

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[164] Deb., iii, 1658. [165] Proc., 639-42; Deb., iii, 1655-76.
[166] Deb., ii, 1032-59, 1060-78. [167] Deb., ii, 1034.
[168] Deb., ii, 1038. [169] Deb., ii, 1041.
[170] Might this not have been a result of the struggle over the "Frederick" Legislature of 1861?

they occur, it will first of all be noticed that the old provision prohibiting clergymen from accepting seats in the legislature was omitted, although Judge Chambers strongly protested against this action on conservative grounds.[171]

The regular sessions of the General Assembly had heretofore closed on the 10th of March, now they were unlimited, though special sessions could only continue thirty days. The former pay of $4 per day was raised to $5 for all sessions, but no member could receive more than $400 for the regular session. This was of course a distinct improvement on the old provision.

A number of the restrictions mentioned above were contained in a section (32) which prohibited the Legislature from passing local or special laws in fourteen different cases, of which those relating to assessment and collection of taxes, to interest on money, those providing for the sale of real estate belonging to minors, giving effect to informal or invalid deeds or wills, those granting divorces, and those "establishing, locating or affecting the construction of roads, and the repairing or building of bridges" were the most important. Also the provisions were continued which prohibited the giving of the credit of the state to aid in works of internal improvement, and that unsecured debts were not to be contracted, except on the authority of the General Assembly to meet deficiencies to the extent of $50,000, or to any amount necessary for the defense of the state.

It was provided that laws were to be passed requiring the stringent oath of allegiance to be taken by the "president, directors, trustees, or agents of corporations created or authorized by the laws of this state, teachers or superintendents of public schools, colleges, or other institutions of learning; attorneys-at-law, jurors, and such other persons as the General Assembly shall from time to time prescribe."[172]

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[171] Deb., ii, 790-6.

[172] Art. iii, sec. 47.

In regard to internal improvements it should be noted that there was a strong sentiment in favor of selling the state's interest in them. The report of the Committee on the Legislative Department had contained a section providing that the General Assembly should take the necessary steps to dispose of the above, and use the proceeds for the payment of the public debt of the state, any surplus to be held as a permanent fund for the support of education.[173] When this section came up for consideration in the Convention, the variety of plans and ideas presented in regard to it, and the utter lack of any definite policy or party lines among the members, show that the subject was largely a new one. It had been raised by several individuals who brought before the committee the argument that arrangements might be made by which the Chesapeake and Ohio Canal, the unproductive state stock in which was the special object of attack, might be leased to the preferred creditors, many of them citizens of Montgomery, Frederick, Washington and Allegany counties, who as citizens were held to have a double interest, both in the usefulness of that particular work, and in its being remunerative to the state.[174]

The question of the sale seemed to come as a surprise to the Convention, and though a large number expressed themselves as favorable to the move, yet so many plans and amendments of various sorts were offered that the subject became involved in a veritable sea of confusion. The state owned large amounts of both productive and unproductive stocks, and the sentiment was entirely divided as to whether certain parts or all of these should be disposed of. The great fear seemed to be, that the Baltimore and Ohio Railroad would gain control of the Chesapeake and Ohio Canal, and use it to discriminate in rates against the western part of the state, and also that the sale would offer a rich field for bribery and political job-

[173] Proc., 193.

[174] Deb., ii, 815.

bing. The uncertain state of the "money market" in time of war was a potent reason urged against any action in the matter.[175] The whole question was finally referred to a special committee of nine on July 27, with instructions to report two days later.[176] A majority of six of the committee reported in favor of the sale of certain interests according to a given method, and the reference of the subject of the sale of the remainder to a popular vote. A minority of four members of the committee reported against any provision for the sale of public works, urging that at present it was inexpedient, as it would tend to dissatisfy a large part of the people, and as it was doubtful if any plan could command a majority of the votes of the Convention. A number of the members had come to this more conservative view, owing to the lack of any definite plan as yet, though Mr. Thomas of Baltimore City, who came originally from Allegany county, vigorously opposed the move as detrimental to the western part of the state.[177] After much discussion and seemingly endless amendments,[178] provisions were finally adopted[179] which authorized the Governor, Comptroller and State Treasurer conjointly, or any two of them, to exchange the state's interest in the Baltimore and Ohio Railroad "for an equal amount of bonds or registered debt now owing by the state," and also to sell the interests in the other works of internal improvement or banking corporations, but subject to such regulations and conditions as the General Assembly might prescribe. There were two provisos to the above, the first reserving from sale the interest of the state in the Washington Branch of the Baltimore and Ohio Railroad, and the second requiring a ratification by the Legislature of the sale of the interests in the Chesapeake

[175] Deb., ii, 814-5, 903, 908.
[176] Proc., 346-9.
[177] Deb., ii, 966-70.
[178] Proc., 298-304, 315-6, 321-2, 340-9, 391-5, 398-404; Deb., ii, 814-9, 872-3, 899-913, 962-74, 1110-25, 1145-53.
[179] Yeas 39, nays 25 (Proc., 402-3). See Art. iii, secs. 52-3.

and Ohio Canal, the Chesapeake and Delaware Canal, and the Susquehanna and Tidewater Canal Companies. In addition, the Legislature was to provide, before the Chesapeake and Ohio Canal could be sold, such laws as should be necessary to authorize the counties of Allegany, Washington, Frederick and Montgomery or any one of them "to create a debt by the issue of bonds or otherwise, so as to enable them, or any of them, to become the purchasers of said interest." All party lines were entirely obliterated during the consideration of the above, and the members voted as individuals.

Another section which was incorporated in this same Legislative Article[180] gave the General Assembly "power to accept the cession of any territory contiguous to this state from the states of Virginia and West Virginia, or from the United States, with the consent of Congress, and of the inhabitants of such ceded territory," and further empowered the Legislature to enact the necessary laws to divide such ceded land into counties, and otherwise make it an integral part of the state. It seems that after West Virginia had seceded from Virginia, there was a widespread belief in Maryland that perhaps portions of this new state or even the whole of it might be induced to consolidate with Maryland. Covetous eyes had also been cast on Loudoun County, Virginia, and also on the Eastern Shore of that state. The provision was in fond anticipation of events which never occurred, but was sufficient to call forth vigorous, and, as usual, vain opposition on the part of the minority, who "protested against the enormity which had been committed in the attempted and pretended erection of this State of West Virginia out of the limits of the State of Virginia." The debate was not of much importance however, and the usual party vote soon carried the provision through.[181]

In concluding the discussion of the various provisions

[180] Section 48.

[181] Proc., 133, 194, 209; Deb., ii, 866-8, 873-6.

incorporated in the article on the Legislative Department, it is interesting to note that during its consideration in the Convention two movements developed which, though unsuccessful, show that certain members were far in advance of the thought of that day in their views on monetary questions. One movement was an attack on state banks led by Mr. Cushing of Baltimore City, one of the most progressive members of the Convention, and the other an effort to abolish the rigid restriction of the usury laws. Of this latter, Mr. Belt of Prince George's was the leading advocate.

Mr. Cushing desired to have the old provision, which provided for the limited liability of stockholders, inspection of banks, etc.,[182] so amended as to read—"The General Assembly shall grant no charter for banking purposes, or renew any banking corporation now in existence." He stated that he desired the question of currency and note issues to be fairly met, and favored the support by Maryland of Secretary of the Treasury Chase's National Bank plan, which provided for much more uniformity in the banking institutions of the country and in their note issues. It should be noticed that this was an anticipation, by at least a year, of the action of the Federal Government which laid the prohibitory tax of ten per cent on the note issues of state banks, and drove so many of the latter to reincorporation under national laws. Mr. Cushing's plan received little support, and was rather treated with indifference, so that gentleman withdrew his motion.[183]

Early in the session, on motion of Mr. Belt, a special committee of five was appointed to consider and report upon interest and usury laws.[184] This committee reported in favor of a provision fixing the legal rate of interest at six per centum per annum, except in cases where a different rate might be agreed upon between contracting par-

[182] Art. iii, sec. 45 (Cons. of 1850-1).
[183] Deb., ii, 835-45.
[184] Proc., 18.

ties, the rate agreed on or contracted for being recoverable in all cases of private contract.[185]

The rate of interest prescribed in the old Constitution was six per centum,[186] and the effort of Mr. Belt and the more progressive members of the Convention who supported him without regard to party, was to have money treated like any other commodity—subject to the market price. A practical turn was given to the argument by the statement that the New York rate of seven per centum was drawing from Maryland its available capital, and that the provision reported would of course tend to remedy this. Mr. Belt was ably seconded by Mr. Cushing, Mr. Negley and others, party lines being again disregarded, but Judge Chambers, who was usually ultra-conservative, Mr. Sands of Howard, and numerous others opposed the provision with the old arguments of "protection of the laboring man," the necessity of "restraining the appetite of the money-lender," and further reasons of the like kind. Mr. Belt delayed final action for some time in the hope that he might obtain from the people, especially from the business men of Baltimore, petitions strong enough to influence sufficient votes in the Convention to carry his measure through,[187] but it was all to no purpose. He was rewarded by only one petition, that from the Baltimore Corn and Flour Exchange,[188] and the old restriction was reenacted. Although by a further effort he succeeded in having this action reconsidered two days before the Convention adjourned, the conservative sentiment was again too strong for him, and the result was exactly the same as before.[189]

Another progressive change of an entirely different character which was advocated, and which suffered a like

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[185] Proc., 520-1. [186] Cons. 1850-1, Art. iii, sec. 49.
[187] Authority of Mr. Joseph M. Cushing. [188] Deb., iii, 1685.
[189] Proc., 693-700. See also Deb., iii, 1476-81, 1482-1509, 1811-26; Frederick "Examiner," Aug. 31, 1864.

fate, was the strong effort to provide for an appointed judiciary. Mr. Stockbridge was the leading advocate of this plan, and the Judiciary Committee, of which he was the chairman, reported a system in conformity with these ideas.[190] He was supported in this move by the more progressive members of both sides, but the test vote, which was taken on the question after very little debate, showed a vote of 51 to 19 in favor of an elective system,[191] as had been provided in the Constitution of 1850-1. The old arguments of right of choice of the people, and too much power given to the Governor if he was allowed to appoint the judiciary, proved too strong for Mr. Stockbridge and his supporters.[192].

There had been some complaint in the state that the courts did not sufficiently expedite business,[193] and in order to relieve this and provide for speedy justice in all cases, the numbers of courts and Judges were generally increased, and their jurisdiction was more clearly defined. A decided improvement was introduced by raising the salaries of Judges, though not to the extent that the committee report had provided. The term of office was increased from ten to fifteen years. Numerous minor changes were introduced, but they are largely of legal or professional interest, and hence out of the province of this work.[194] It should be mentioned however, that provision was made for all the Judges then in office to serve out the terms for which they had been elected under the old Constitution.

The minor legal offices showed some change, as the Justices of the Peace were now appointed by the Governor, and the Constables by the County Commissioners and by the Mayor and City Council of Baltimore. These officers were formerly elected by the people. Also, the cumbersome system of electing two Sheriffs, one of whom

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[190] Proc., 415-23. [191] Proc., 514-5. [192] Deb., iii, 1385-93.
[193] See Frederick "Examiner," July 6, 1864.
[194] See Article iv of the Constitution as adopted.

was to serve only in case of the death or disqualification of the other,[195] was done away with, and the more common sense plan substituted by which only one Sheriff was to be elected, and the Governor by appointment to fill any vacancies.

We now come to an article which was one of the greatest merits of the Constitution. It was entirely new, and provided for a state system of education. For years before this time numerous attempts had been made at the various sessions of the Legislature to inaugurate some sort of a general educational system, but for one reason or another these attempts had always resulted in failure. The sentiment of the members of the Convention was practically a unit in favor of provisions of this character, and they were backed in this by a large majority of the people of the state. Mr. Cushing of Baltimore City, chairman of the Committee on Education, submitted the unanimous report of that committee,[196] which was finally adopted with changes mostly of a minor character. In its final form it provided as follows:[197] within thirty days after the ratification of the Constitution by the people, the Governor was to appoint, subject to the confirmation of the Senate at its first session thereafter, a State Superintendent of Public Instruction, the term of office to be four years, and the salary $2500 a year, with certain sums for travelling and incidental expenses which were to be fixed by the General Assembly.

This officer was to report to the General Assembly within thirty days after the commencement of its first session under the new Constitution, an uniform system of free Public Schools. He was also to perform such other duties pertaining to his office as should from time to time be prescribed by law. The Governor of the State, the Lieutenant-Governor, the Speaker of the House of Dele-

[195] Constitution of 1850-1, Art. iv, sec. 20.
[196] Proc., 372-3.
[197] Art. viii.

gates, and the Superintendent of Public Instruction, were to form a State Board of Education, the duties of which were to be prescribed by the General Assembly. There were to be School Commissioners in each county to be appointed by the State Board for a term of four years, to the number deemed necessary by the State Superintendent. The General Assembly at its first session under the new Constitution, was to provide a uniform system of schools, by which a free school was to be kept open in each school district for at least six months in each year. In case it failed to do this, the system reported by the State Superintendent was to become law, subject to the provisions of the Constitution and to future alteration by the General Assembly. At each regular session of the Legislature, an annual tax of ten cents on the hundred dollars was to be levied throughout the state, the proceeds of which were to be distributed among the counties and the city of Baltimore in proportion to their respective population between the ages of five and twenty years. No additional local taxes were to be levied without the consent of the people affected. Further, there was to be an additional annual tax of five cents on the hundred dollars, the proceeds of which were to be invested until a permanent School Fund of six million dollars was formed, this Fund to remain inviolate, and the annual interest of it disbursed for educational purposes only.[198] As soon as this Fund was formed, the ten cent tax might be discontinued in whole or in part.

The Committee on Education had in mind two men for the position of State Superintendent of Public Instruction —Libertus Van Bokkelen of Baltimore County and William H. Farquhar of Montgomery County, and it was privately agreed with Governor Bradford that he was to appoint either one of these men. The School Fund idea

[198] For school funds prior to 1865 see report of House Committee, House Journal, 1864, pp. 92-3.

was taken from the school law of the state of Massachusetts, which had a sinking fund, and the remainder of the report was elaborated after a consideration of all the various state school laws.[199] The report was finally adopted without much difficulty, although there was much discussion of the amount of tax to be levied, and the amount of salary of the State Superintendent. Several members also questioned the legality of the provision providing that the system reported to the Legislature should go into effect in case of the failure of that body to act in the matter, but Mr. Cushing and M. Stirling answered this by affirming the sovereign power to provide what it pleased, which was given to the Convention by the people.[200] Several of the minority members attempted, in a most narrow minded spirit, to prohibit the application of any part of the School Fund toward educating the free negro population, but were overwhelmingly defeated.[201]

As regards the organic law embodied in the Constitution, the only important facts which remain to be noted are first, that it was provided that the Legislature might under certain conditions organize new counties, and second, townships were substituted for election districts as the smallest unit of local government, their powers to be prescribed by the Legislature.[202] Mr. Stockbridge seems to have been largely responsible for this change, his desire being to introduce into Maryland, if possible, the New England system of "Town Meetings."[203] Third and last, three methods of amending the Constitution were provided,[204] that is to say—amendments might be submitted to the people after three-fifths of both houses of the General Assembly had passed them; a convention might be called by a two-thirds vote of each house if the people approved it at the polls; and finally, in the year 1882 and in

[199] Authority of Mr. Cushing. Mr. Van Bokkelen was appointed on November 12, 1864.
[200] Deb., ii, 1201-36, 1241-50. [201] Proc., 453-6.
[202] Art. x. [203] Proc., 33; Deb., i, 65. [204] Art. xi.

every twentieth year thereafter, the question of calling a Convention was to be submitted to the people. Thus we see that the slow conservative methods provided in the old Constitution were done away with, and the final right of the people to change their mode of government whenever it pleased them so to do, was fully recognized.

It should be said, to sum up at this point, that as far as the organic law was concerned, the new Constitution was a decided advance toward modern methods and systems of government, and showed distinct results of the evident wish on the part of the Convention, to have the Constitution of Maryland conform, as far as possible, to the best features embodied in the Constitutions of the other states of the Union.[203]

We now come to a most unpopular feature of the Constitution, which contributed largely to the intense opposition that was aroused against it, and which caused it to be ratified only by a very narrow majority. This was, the method and regulations under which it was to be submitted to the people for their ratification.

As prescribed by the new Constitution,[204] the Governor within five days after the adjournment of the Convention was to issue a proclamation, calling for an election to be held in the city of Baltimore on October 12, 1864, and in the counties of the state on October 12th and 13th. At this election the vote was to be by ballot, and the question to be decided was the ratification or rejection of the Constitution. But it was further provided, that the test oath prescribed in the Constitution for all future elections after the Constitution should be adopted, was to be required of all voters in the election on the ratification of that instrument itself. Again, we have seen that the article on the Elective Franchise required[207] the General Assembly to "provide by law for taking the votes of soldiers in the army of the United States serving in the field." In order

[203] See Deb., i, 360, 394-5; ii, 1034-5, 1056, 1267, 1317-8, etc.
[204] Art. xii, secs. 8-10. [207] Art. i, sec. 2. See page 71.

not to lose this vote in the ratification of the Constitution and in the regular national and state elections of November, 1864, special provisions were inserted[208] prescribing rules and regulations for the soldiers' vote, which were to remain in force till the Legislature should provide by law, as required above, some other mode of taking the same. All returns of the vote were to be made to the Governor, who was made sole judge of their correctness, and whether or not they were cast according to the provisions of the new Constitution.

Naturally the minority hotly objected to these provisions, being opposed to this method of virtually putting the Constitution into operation before it was adopted by thus prescribing the mode of voting upon itself. The majority answered that the people in their sovereign capacity had by the election of the previous April made the Convention Bill the supreme law of the land, and that in this matter the Convention would be acting according to the provision of that instrument that the new Constitution "should be submitted to the legal and qualified voters of the State, for their adoption or rejection, at such time, in such manner, and *subject to such rules and regulations*" as the Convention might prescribe. The majority further claimed that the test oath only required the same qualifications as those prescribed by the Convention Bill in the clause following the above, which provided that the "provisions hereinbefore contained for the qualification of voters," etc., should be "applicable to the election to be held under this section." The minority answered that the "rules and regulations" the Convention might prescribe could only be those under which the *previously* legal and qualified voters were to vote. They also asked, why there was any need of submitting the Constitution to the people at all, if the Convention had such absolute power under the Convention Bill. They held, further, that the objectionable provisions deprived certain citizens of their right to

[208] Art. xii, secs. 11-16.

vote, and introduced a perfectly new class of voters hitherto unknown to the laws. The majority answer to this last was that those citizens barred from voting had already been practically disfranchised by laws of the National Government, and by decisions of the various courts, and that the soldiers were not a new class of voters, but merely citizens exercising their right of franchise under new conditions. The entire debate was to a great extent along these lines, and was sustained with exceptional brilliancy by the minority members, Mr. Miller of Anne Arundel in particular making a speech which showed great power of logical thought and analytical reasoning. As usual, the result was foreordained, and the provisions passed by the usual party vote.[209] An attempt of the minority to insert a provision providing for new elections in those districts in which there might be military interference was promptly voted down.[210]

From the entire absence at the time of the April election, as far as we can see, of any such extreme views as to the proper construction of the Convention Bill, it is safe to judge that the people of the state had no idea of the extent to which these measures would finally be carried. The majority members of the Convention, however, with rare acuteness saw their opportunity, and were quick to avail themselves of it. Their action, to say the least, was clearly revolutionary, and its justification or condemnation at the present day depends upon individual ideas as to the legitimacy of such measures in time of war, and whether, as seen in the final results, the end justified the means. It only remains to add at this point, that the final draft of the new Constitution was adopted by the Convention on September 6, by the party vote of 53 yeas to 26 nays, 17 members being absent and not voting.[211] After the usual closing remarks by the President, the Convention adjourned.

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[209] For above see Proc., 602-4, 611-3, 670-81; Deb., iii, 1708-19, 1724-56, 1758-71. [210] Proc., 672-3. [211] Proc., 770-1.

III.

In accordance with the eighth section of the twelfth article of the new Constitution, Governor Bradford on September 9, 1864, issued a proclamation calling an election on October 12 and 13 for the purpose of ascertaining the sense of the people in regard to the adoption or rejection of the document. Copies of the Constitution were immediately distributed throughout the state, and a fierce political campaign was entered upon in regard to it. The radical Union men very generally approved of the work of the Convention, but many of the more conservative citizens, including some of those who had hitherto supported the Unconditional Union party, came out publicly in open opposition and used their influence to prevent the adoption of the Constitution. Hon. Reverdy Johnson is perhaps the most striking instance of this latter class. He strongly condemned the requirement of the test oath in the vote on the Constitution, and declared that the Convention in requiring it exceeded its powers by thus acting in a legislative capacity. The Democrats of the state received the Constitution with a storm of indignation, and at once entered vigorously upon an attempt to defeat it in the coming election. This movement was doubtless precipitated by the action of the thirty-five minority members of the Convention, who immediately after the adjournment of that body, and before they had returned to their homes, drew up and published[1] a unanimous protest, addressed "To the Voters of Maryland," in which they denounced the Convention and the new Constitution in the strongest terms. After arguing that the period of a civil war was not the time in which to make any or-

[1] See "Sun," Sept. 10, 1864.

ganic changes in the Constitution or system of government, and urging the "violent partisan measures" of the majority members as proof of this, they proceeded to specifically condemn numerous provisions of the Constitution, in particular those providing for emancipation, for paramount allegiance to the United States Government, and also the various test oaths, the increase in the legislative representation of Baltimore City, the soldiers' vote, and the manner of submitting the document to the vote of the people. They further said—"Not only is this most wanton violation of your rights aggravated by a contemptuous refusal to allow the least shadow of compensation, but every possible means have been used to extend and perpetuate the injury. The authors of these outrages, apparently sensible that at some future day, a returning sense of justice might succeed the mad fanaticism of the hour, and reverse the iniquitous decrees they had pronounced, have actually assumed the prerogative of judging for all time to come, for the future generations of the people, and the future Legislatures of the state. The fiat has gone forth that no future Legislature shall have power to make compensation. The finances of the state may be ample, the people of the state may desire to repair, to some extent at least, this enormous injury, the Legislature may unanimously respond to this sentiment, but no, the lunatics of 1864 have manacled their hands, they have no constitutional power to do justice. Is the equal to such enormity to be found in the history of any civilized region of the world? We fearlessly answer, no! Other people have manumitted negro slaves. Most of the states north of us have manumitted negro slaves. Did any one of these do this thing as the Convention has done it? Most certainly not."

They closed by characterizing the Constitution as a "wholesale robbery and destruction perpetrated by those whose cardinal duty was to provide for the security of the persons, the protection of the property and the preserva-

tion of the inalienable rights of all the citizens of the state."

Certain citizens of Cecil County presented a memorial to Governor Bradford objecting to the test oath and appealing to him to instruct the Judges of Election to disregard it, and also to disregard it himself by announcing that he would not count the votes of any county in which the oath had been administered to voters. Governor Bradford, on September 21, 1864, wrote a letter to Mr. D. R. Magruder, the chairman of the committee which presented the above petition, and declined to take such action as beyond his jurisdiction, maintaining that his duties were merely ministerial. He also defended the action of the Convention on the ground that the body had plenary powers, and cited the Convention of 1850-1 as a precedent.

Mr. George Vickers, a prominent citizen of Chestertown, wrote several letters to the Governor advocating the same line of action on his part, and in reply Governor Bradford again took a like stand as to limitation of his powers.[2]

The Democrats, who were now becoming better organized throughout Maryland, in their State Convention which met in Baltimore on September 29, 1864, by a unanimous vote passed resolutions offered by Mr. Clarke of Prince George's in which the new Constitution was condemned, and its defeat at the polls was urged.[3] Many political meetings were held throughout the state by both parties, and the various newspapers contained numerous articles for and against the Constitution, many of them contributed by the foremost men of the state. On the other hand, the following from the Centreville (Queen Anne's County) *Observer*[4] may be taken as an instance of the atti-

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[2] This correspondence was made public during the first week of October. See "American," October 5, 1864.

[3] "Sun" and "American" of September 30, 1864.

[4] Quoted in "American," October 6, 1864.

tude of the more extreme pro-slavery Democrats. In opposing the Constitution, this paper said—"Would to God we could picture sufficiently plain the importance of the issue now pending in this state. We . . . leave the reader to decide for himself whether he will perpetually rob his neighbour of his happiness, or whether he will vote against the inhuman, illegal and unjust instrument, and thereby declare himself a friend to the oppressed. . . . Should this infamous instrument be adopted, a perpetual line of demarcation will undoubtedly be drawn both in political, social and business life. No man who entertains any regard for his liberty, will, after the adoption of this Constitution, aid in the support of those who vote for it, and for his oppression."

But the Union party was none the less active in its support of the new Constitution, and the state was vigorously canvassed by Montgomery Blair, Thomas Swann, Henry Winter Davis, William T. Purnell, Archibald Stirling, Jr., Henry Stockbridge, John V. L. Findlay, and other prominent men of that party.

The arguments advanced by both sides in this campaign were largely a repetition of those brought forward by the Union and Democratic members of the Convention in their discussion of the provisions in regard to submitting the Constitution to the people.[5]

Throughout the entire movement leading to the Constitution, President Lincoln had been a close and interested observer, and had given it his constant personal encouragement.[6] Being requested to aid in this final contest, on October 10 he wrote a letter to Henry W. Hoffman,[7] which was read that evening at a Union mass-meeting in Baltimore. In this letter he stated that he would be "gratified exceedingly if the good people of the state [would], by their votes, ratify the new Constitution."

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[5] See pages 89-90.
[6] Nicolay and Hay, "Life of Lincoln," viii, 465. [7] Ibid., p, 467.

The election took place as ordered, on October 12-13. There seems to have been little or no disorder or military interference at the polls, although it was charged that in some districts gross frauds were perpetrated.[8] These could hardly have been very extensive on either side, as recourse would undoubtedly have been had to the courts in the same manner as was done in the case of the soldiers' vote. The result of the regular state vote showed that the Constitution had been defeated by an adverse majority of 1995.[9] Of course everything now depended on the result of the soldiers' vote, the returns of which were slowly coming in. The opponents of the Constitution now attempted to throw out this latter vote, and thus insure the final defeat of the document. On October 24, 1864, an application was made to the Superior Court of Baltimore City (Judge Robert N. Martin) on behalf of Samuel G. Miles for a mandamus directed to Governor Bradford, commanding him to exclude all votes cast at any place outside of the state of Maryland from the count upon the question of the adoption of the Constitution. The petitioner stated that he was a qualified voter of Maryland according to the existing Constitution, but had been unlawfully excluded from voting by the Judges of Election because he refused to take the oath illegally prescribed according to the new Constitution. He further averred that the soldiers had not been subjected to the oath according to the requirements of the new Constitution, and hence their votes should not be counted if the above action of the Judges of Election was sustained. Also by this same document the petitioner stated that he would be unlawfully deprived of his property in slaves without any compensation therefor. The court dismissed the petition on the

[8] "Sun," Oct. 13; Frederick "Examiner," Oct. 19; Denton "Journal" (quoted in "Sun" of Oct. 24); "American," Oct. 29. See also Scharf, "History of Maryland," iii, 596.

[9] See appendix for detailed vote.

same day, on the ground that no sufficient reason was given for its interposition. From this decision an appeal was at once taken to the Court of Appeals. Prior to this, the same petition had been presented to the Circuit Court of Anne Arundel county (Judge William H. Tuck), had been likewise dismissed and an appeal taken. Further, pending these proceedings still another petition, in behalf of E. F. Chambers and others, was presented to the Circuit Court of Baltimore County (Judge John H. Price) and also to the same Anne Arundel Court, praying for an injunction to restrain the Governor from counting the soldiers' vote. It was dismissed by both courts and likewise appealed.

This made four appeals, and hearing on them was begun in the Court of Appeals on October 27, 1864. After disposing of some technicalities as to the eligibility of certain Judges to sit in the trial of these cases on account of their owning slaves, the case was argued by I. Nevitt Steele, William Schley[10] and T. S. Alexander on behalf of the appellants, and by Henry Stockbridge and Henry Winter Davis for the other side. On October 29, 1864, the court, through Hon. Richard J. Bowie, the Chief Justice, gave its decision unanimously sustaining Judge Martin in his order dismissing the first case.[11]

While these proceedings were in progress, application was made to Governor Bradford for permission to canvass the returns of the soldiers' vote made to him, of which he was sole judge, and to show cause why certain of these votes should be rejected and not counted. The Governor consented, and the votes and returns were canvassed in detail, William Schley arguing the question against admitting them, and Archibald Stirling, Jr., and Alexander

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[10] Not the member of the Convention. The latter was Frederick Schley, of Frederick county.

[11] Deb., iii, 1915-9; 22 Md. Reports, 170, Miles vs. Bradford. Also see contemporary newspapers.

Randall in their favor. Governor Bradford gave his decision on the numerous questions raised as to their legality, in a lengthy opinion, dated October 28, 1864, and published simultaneously with his proclamation declaring the final result of the total vote on the Constitution. The objections raised by Mr. Schley were mainly on the ground of technicalities, as to requiring the oath of the soldiers who voted, as to the paper on which the ballots were printed, as to counting the votes of certain companies not attached to any regiment, etc.

Out of the total of 3186 votes cast by the soldiers, 285 votes "for," and 5 "against" the Constitution were rejected, and 2633 votes "for" and 263 "against" it were accepted. Adding these latter numbers to the vote of the state, it made a total of 30,174 for the Constitution, and 29,799 against it, leaving the small majority of 375 in its favor, an exceedingly close result in a total vote of nearly 60,000. On October 29, 1864, Governor Bradford issued his proclamation declaring the new Constitution adopted, and causing it to go into effect on November 1, 1864.

It should be observed that the overwhelming preponderance of the favorable vote on the part of the soldiers does not necessarily presuppose fraud or unfairness on the part of either the civil or military authorities. Men thrown together in the camp, or standing side by side on the field of battle would naturally be largely of one mind on political matters. This was seen in the case of the votes of the soldiers of various other states at this period. Also, men who were offering their lives in defense of their principles would not be apt, from motives of legal expediency, to hesitate in regard to measures considered as calculated to advance their cause.[13]

We thus come to the end of the movement which

[13] The War Department issued at Washington on Oct. 1, 1864, "General Order, No. 263," intended to insure, as far as possible, freedom and fairness in the vote of the soldiers of the various states.

occupied the thought of the people of the state during nearly two years preceding the close of the war. It was largely the result of a long-existent feeling of the need of reform in the social and political life of Maryland, and although precipitated and somewhat changed in character by the influence of the Civil War, would undoubtedly have been successful at some later day. In this latter case it would likely have been less extreme, yet perhaps more thorough, in its results, and hardly would have suffered the effects of the inevitable reaction which in the year 1867 not only abrogated the objectionable features of the Constitution of 1864, but rejected some of its greatest merits as well. But the fact that these merits and defects once existed in the organic law and government of the state, will not be forgotten by the more thoughtful people of Maryland, but will serve as a valuable experience to guide them in many hitherto untried paths of reform. Furthermore, if the justification of a higher national necessity is denied the Union men of 1863-4, their courage shown in the abolition of slavery in the state of Maryland deserves the thanks and appreciation of their posterity.

APPENDIX

Vote on the Constitution, October 12-13, 1864:

	For	Against
Allegany county	1,839	964
Anne Arundel county	281	1,360
Baltimore city	9,779	2,053
Baltimore county	2,001	1,869
Carroll county	1,587	1,690
Caroline county	471	423
Calvert county	57	634
Cecil county	1,611	1,611
Charles county	13	978
Dorchester county	449	1,486
Frederick county	2,908	1,916
Harford county	1,083	1,671
Howard county	462	583
Kent county	289	1,246
Montgomery county	422	1,367
Prince George's county	149	1,293
Queen Anne's county	220	1,577
Somerset county	464	2,066
St. Mary's county	99	1,078
Talbot county	430	1,020
Washington county	2,441	985
Worcester county	486	1,666
	27,541	29,536
Soldiers' vote	2,633	263
	30,174	29,799
	29,799	
Majority	375	